Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

DELAWARE RIVER PORT AUTHORITY,
Petitioner,

v.

FRATERNAL ORDER OF POLICE,
PENN-JERSEY LODGE 30, and JOSEPH VENA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF
NEW JERSEY,
APPELLATE DIVISION

PETITION FOR WRIT OF CERTIORARI

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138 pp

QUESTIONS PRESENTED

1. By requiring the Delaware River Port Authority ("DRPA") to submit labor disputes over wages and other issues to binding interest arbitration under a court-created arbitration procedure before a court-appointed arbitrator, did the New Jersey court improperly dispense with and misconstrue the standard interstate compact amendment requirement, in Article IV of the Pennsylvania-New Jersey federal compact creating the DRPA, of "action of either State concurred in by the legislation of the other" when, instead, it simply "implied" agreement between Pennsylvania and New Jersey to amend the Compact from nothing more than "common policies" of the states, notwithstanding (a) that the court's determination is inconsistent with an express Compact provision that confers on the DRPA's Commissioners exclusive power "to fix and determine . . . duties and compensation" of its employees, and (b) that the Pennsylvania and New Jersey binding interest arbitration statutes, which the court found to embody a similar "public policy," neither mention nor by definition encompass the DRPA, and, as construed by Pennsylvania and New Jersey courts, concededly do not even otherwise apply to the DRPA?

2. In determining whether a common similar "policy" gleaned from respective state statutes of bi-state compact parties that do not by their terms specifically bring a bi-state compact entity within their scope may nonetheless be imposed on a bi-state compact entity, is the appropriate legal standard

(a) a legal standard that requires "a painstaking comparison" of laws of the creator-states to determine whether the states' legislative enactments are not only "substantially similar" and "parallel and complementary," but provide reciprocal legislative intent of agreement that the laws shall apply to the bi-state agency, as the courts of Pennsylvania and New York, as well as the lower federal courts in these states, have held, or

(b) the novel "implied amendment" legal standard adopted by the New Jersey courts, which requires no more than that a court divine in the respective compact

states' statutes of similar subject matter some common "basic public policy" – such as one generally "favoring arbitration," or one that "public employees are entitled to engage in collective negotiations with their employer," as in this case – as the sole basis for speculating that the states intend that specific provisions of state statutes apply to the compact entity, disregarding that (i) there are important differences in language, in scope, and in specific public policy of the two states' legislation, (ii) the implied amendment is contrary to powers expressly conferred by the compact, and (iii) there is no other direct or indirect evidence of legislative intent by either state to apply such statutory provisions to the compact entity?

3. Does the New Jersey court's determination below, that mere similarity in general "policy" between respective legislation of Pennsylvania and of New Jersey is a sufficient basis for imposing binding interest arbitration procedures on the DRPA, circumvent the standard compact amendment provisions, common to many interstate compacts, and violate the Compact Clause of the Constitution of the United States, Article I, § 10, cl. 3, by creating a *de facto* "implied amendment" that lacks the concurrence of the Pennsylvania and New Jersey legislatures?

4. By engrafting onto the DRPA Compact a hybrid, compulsory binding interest arbitration procedure for labor disputes that destroys the DRPA Commissioners' exclusive power thereunder "to fix and determine . . . " the duties and compensation of DRPA employees, and circumvents the New Jersey Governor's control by statutory veto power over DRPA actions, did the New Jersey court subordinate to state law express provisions of the DRPA Compact, "a law of the United States," under this Court's decisions in *Texas v. New Mexico,* 462 U.S. 554, 564 (1983); *Cuyler v. Adams,* 449 U.S. 433, 438 (1981), and thus violate the Supremacy Clause of the Constitution of the United States, Art. VI, clause 2, by ordering relief inconsistent with the Compact's express terms?

LISTING OF PARTIES TO THE PROCEEDING

Parties to the proceeding in the Supreme Court of New Jersey were:

Petitioner, the Delaware River Port Authority, a Congressionally approved bi-state instrumentality of Pennsylvania and New Jersey.

Respondents, the Fraternal Order of Police Penn-Jersey Lodge 30 ("FOP"), an unincorporated labor organization, which purports to represent certain police officers employed by the DRPA, and Joseph Vena, the FOP's former First Vice-President.

RULE 29.6 LISTING

The Delaware River Port Authority does not own any nonwholly owned subsidiaries. There is no parent or publicly held company owning 10% or more of Delaware River Port Authority stock.

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PETITION FOR WRIT OF CERTIORARI

The Delaware River Port Authority ("DRPA"), a bi-state compact entity created in 1932 by the Commonwealth of Pennsylvania and the State of New Jersey, and approved pursuant to the Compact Clause of the Constitution of the United States, Art. I, § 10, cl. 3, by Resolution of Congress, Pub. Res. No. 26, ch. 258, 47 Stat. 308 (1932), respectfully requests that a writ of certiorari be issued to review the decision and judgment of the Superior Court of New Jersey, Appellate Division, entered on July 22, 1999.

OPINIONS BELOW

The Opinion of the Superior Court of New Jersey, Appellate Division, is reported at *FOP, Penn-Jersey Lodge 30 v. Delaware River Port Auth.*, 323 N.J. Super. 444, 733 A.2d 545, *cert. denied,* 162 N.J. 663, 745 A.2d 1213 (1999)(A-1a).[1] The Supreme Court of New Jersey denied the DRPA's petition for certification and appeal to review the decision of the Appellate Division (A-22a) on December 7, 1999.

The decisions of the Superior Court of New Jersey, Law Division, are unreported and are set forth herein (A-16a, 18a, 20a).

JURISDICTION

The Order of the Supreme Court of New Jersey denying the DRPA's petition for certification and appeal (A-22a) is dated December 7, 1999. This Court has jurisdiction to review the judgment of the Superior Court of New Jersey, Appellate Division, by writ of certiorari pursuant to 28 U.S.C. § 1257(a). Upon motion, the time for filing this Petition for writ of certiorari was extended until May 5, 2000, by this Court's action taken on February 17, 2000.

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1. References to 'A-' followed by a page number are to the Appendix to the Petition.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Compact Clause of the Constitution of the United States, Article I, § 10, clause 3, provides:

> No State shall, without the Consent of Congress, . . enter into any Agreement or Compact with another State . . . .

The Supremacy Clause of the Constitution of the United States, Article VI, clause 2 provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Compact between Pennsylvania and New Jersey creating the Delaware River Port Authority, as amended (the "Compact"), is set out in Appendix F, *infra,* (A-23a-80a). Article IV(e) of the DRPA Compact provides, in relevant part:

> For the effectuation of its authorized purposes the commission is hereby granted the following powers:
>
> * * *
>
> (e) To appoint, hire or employ . . . such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties, and compensation.

(A-71a).

Article IV provides that additional powers may be imposed on the DRPA by the action of either State "concurred in by the legislation of the other":

> The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by the legislation of the other.

(A-73a).

The Resolutions of the Congress of the United States approving the Compact, Pub. Res. No. 26, ch. 258, 47 Stat. 308 (1932), as amended, are set out at Appendix F, *infra,* pp. A-23a-24a, 39a, 55a-56a, 66a.

Pennsylvania's Act 111, 43 Pa. Stat. Ann. tit. § 217.1, *et seq.* ("Act 111"), applicable only to certain "[p]olicemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth . . .," is set out at Appendix G, *infra,* at A-81a-85a.

New Jersey's binding interest arbitration procedure set forth in the New Jersey's Police and Firefighters Interest Arbitration Reform Act ("NJIARA"), N.J. Stat. Ann. 34:13A-14a, *et seq.*, is set out in Appendix H, *infra,* at A-86a-103a.

STATEMENT OF THE CASE

1. The Delaware River Port Authority.

The Delaware River Port Authority, originally the Delaware River Joint Commission,[2] a bi-state compact entity, was created in 1932 by interstate compact between Pennsylvania and New Jersey, for the purpose of developing and maintaining bridges and port facilities between the two states. 47 Stat. 308 (A-24a-25a); N.J. Stat. Ann. 32:3-2, *et seq.*; Pa. Stat. Ann. tit. 36 § 3503. Congress duly approved the DRPA Compact in 1932. Pub. Res. No. 26, ch. 258, 47 Stat. 308 (1932). (A-23a).

The DRPA is authorized, *inter alia*, to construct bridges, to build connecting roads, to provide transportation services and to engage in various economic development projects within the Delaware River Port District of Pennsylvania and New Jersey. The magnitude of its current activities is illustrated by the fact that, in 1999, approximately 50 million vehicles crossed the DRPA's major interstate bridge facilities, and bridge tolls approximating $116 million were collected to support these operations. The DRPA maintains four important Pennsylvania-New Jersey interstate bridge facilities (the Benjamin Franklin Bridge, the Walt Whitman Bridge, the Commodore Barry Bridge and the Betsy Ross Bridge). Through a wholly-owned subsidiary, the Port Authority Transit Corporation, it also operates a high-speed rail line over one of the bridges between the two states.

Interstate compact entities collectively employ thousands of persons nationwide. Congress has authorized over 190 such bi-state or interstate compacts, 34 of which involve as a party the State of New Jersey.[3] Many compacts create compact entities. Compact entities in which New Jersey participates alone employ nearly 10,000 people, and include (1) the DRPA, itself (Pennsylvania and New Jersey), (2) the Delaware River &

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2. In 1951, New Jersey and Pennsylvania amended the Compact by enacting joint legislation which, among other things, changed the name to the "Delaware River Port Authority." Act of July 17, 1952, Pub. L. 573, 66 Stat. 747 (A-39a); N.J. Stat. Ann. § 32:3-1; Pa. Stat. Ann. tit. 36 § 3503.

3. Council of State Governments, *Interstate Compacts & Agencies* 134-156 (1998).

Bay Authority ("DRBA") (New Jersey and Delaware), (3) the Port Authority of New York and New Jersey (New Jersey and New York), and (4) the Waterfront Commission of New York Harbor (New Jersey and New York). These important bi-state compact entities are directly and substantially affected by the New Jersey decision at issue in this case.

The DRPA is authorized by its Compact, and by specifically enacted, parallel, and nearly identical legislation of both Pennsylvania and New Jersey, to appoint and maintain a police force to patrol bridges, their approaches and other Authority property. N.J. Stat. Ann. 32:4-6, *et seq.*; Pa. Stat. Ann. tit. 36 § 3504.1, *et seq.* The DRPA is governed by a Board of Commissioners which is comprised of eight members from Pennsylvania, six appointed by the Governor of Pennsylvania, in addition to Pennsylvania's Auditor General and State Treasurer, and eight members appointed by the Governor of New Jersey. Article IV(e) of the DRPA Compact grants its Board of Commissioners the power to "fix and determine [the] qualifications, duties, and compensation" of its employees and occupies the field of labor relations between the DRPA and its employees. Act of October 27, 1992, Pub. L. 102-544, 106 Stat. 3576 (A-71a); N.J. Stat. Ann. 32:3-5(e); Pa. Stat. Ann. tit. 36 § 3503.

Amendment of the DRPA Compact is governed by the Compact Clause of the Constitution and, more specifically, by Article IV of the DRPA Compact, which provides that the DRPA "shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time *by the action of either State concurred in by legislation of the other.*" (A-73a).[4] Provisions identical or nearly identical to this amendment provision, requiring legislation by one state "concurred in" by the other member of the compact, or "concurrent legislation" to amend a compact, are standard in numerous interstate compacts, involving all fifty states and the District of Columbia.[5]

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4. Emphasis added throughout unless otherwise noted.

5. *See, e.g., Chesapeake Bay Commission Agreement* ("concurrence of the legislatures" required); *Bi-State Development Agency Compact Missouri* ("such additional powers as shall be conferred on it by the legislature of either state concurred in by the legislature of the other"); *Breaks Interstate*

Pursuant to Article IV, from time to time since the DRPA's creation, Pennsylvania and New Jersey have acted by

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NOTES *(Continued)*

Park Compact ("concurrent action" required); *Connecticut-New York Railroad Passenger Transportation Compact* ("concurrent legislation" required); *Connecticut River Flood Control Compact* ("action of the legislature of any of said states, concurred in by the legislation of the other states" required); *Delaware Valley Urban Area Compact* ("concurrent legislation" required); *New England Interstate Water Pollution Control Compact* ("acts of a signatory state concurred in by the others" required); *New York-New Jersey Port Authority Compact* ("action of the legislature of either state concurred in by the legislature of the other" required); *Kansas City Area Transportation District and Authority Compact* ("to exercise such additional powers as shall be conferred on it by the Legislature of either State concurred in by the Legislature of the other"); *Kansas-Missouri Flood Prevention and Control Compact* ("concurrent legislation" required); *Merrimack River (Basin) Flood Control Compact* ("action of the legislature of either of said states, concurred in by the legislature of the other" required); *Mississippi River Interstate Pollution Phase-Out Compact* ("effective when concurred in by all signatories"); *New England Higher Education Compact* ("concurrent act or acts" required); *Palisades Interstate Park Compact New Jersey* ("concurrent action" required); *Portsmouth-Kittery Bridge Compact* (action "concurred in by the legislature of the other state" required); *Tahoe Regional Planning Compact* (same); *Thames River Flood Control Compact* (same); *Tri-State Agreement on the Chesapeake Bay* ("concurrence of the legislatures" required); *Tri-State Lotto Compact* ("concurrent legislation" required); *Tri-State Sanitation Compact* ("additional powers as shall be conferred upon it by the act of acts or a signatory state concurred in by the others" required); *Wabash Valley Compact* ("concurred in by the legislature of the other" required); *Washington Metropolitan Area Transit Authority Compact* ("concurred in by all of the others" required); *Waterfront Commission Compact* ("concurred in by the Legislature of the other" required); *Wheeling Creek Watershed Protection and Flood Prevention Compact* ("concurrent action" required). *See also Arkansas River Compact of 1949* ("unanimous action of the states" required); *Arkansas River Basin Compact of 1970* (same); *Bear River Compact* ("ratified by the legislatures of the signatory states" required); *Belle Fourche River Compact* ("amended by the action of the legislature of the states" required); *Colorado River Compact* ("legislative ratification" required); *Columbia River Compact* ("mutual consent and approbation of both states" required); *Delaware River and Bay Authority Compact* ("authorization by the law of both states" required); *Gulf States Marine Fisheries Compact* ("acts of their respective legislatures" required); *Interstate Insurance Receivership Compact* ("unanimous consent of the Compacting States" required); *Midwestern Higher Education Compact* ("enactment of the legislatures of all compacting states" required); *Interstate Uni-*

DRPA's creation, Pennsylvania and New Jersey have acted by adopting almost identical legislation specifically applicable to the DRPA, to delegate additional powers and to impose additional duties on the DRPA. When enacted by one of the states, such legislation typically provides that it shall not be effective until the other state enacts identical legislation. Neither the Pennsylvania legislature nor the New Jersey legislature has ever enacted legislation specifically applicable to the DRPA that requires disputes with its police officers, or any other DRPA employees, to be submitted to binding interest arbitration. In fact, Pennsylvania's interest arbitration statute is not even applicable to all Pennsylvania police departments.

The methods typically employed to amend the terms of a compact are (i) enactment of legislation by each state legislature specifically referring to the entity and addressing some aspect of the operation of the entity in question, or (ii) enactment of legislation of more general application that includes by specific definitional reference a class of entities that includes bi-state compact entities to which the legislation is made applicable. Such amendments, adopted by specific concurrent legislation, may then made be the subject of formal

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form Agreement on Detainers ("unless the states concerned shall have entered into a supplemental agreement" required); *Interstate Wildlife Violator Compact* ("endorsement by all participating states" required); *Jennings Randolph Lake Project Compact* (ratification required); *Kansas-Nebraska Big Blue River Compact* ("unanimous action" required); *Maine-New Hampshire School District Compact* (approval required); *Midwest Interstate Low-Level Radioactive Waste Compact* (amendments effective when "enacted by all party states"); *Missouri and Kansas Metropolitan Culture District Compact* ("upon enactment"); *Nonresident Violator Compact* ("endorsement of all party jurisdictions" required); *Nurse Licensure Compact* ("enactment into the laws of all party states"); *Ohio River Valley Water Sanitation Compact* ("subsequent action of the respective legislatures of the signatory states" required); *Potomac River Compact of 1958* ("joint enactment" required); *Red River Compact* ("appropriate action of the Legislatures of all Signatory States" required); *Rio Grande Interstate Compact* ("unanimous action" required); *Southern Regional Education Compact* ("legislative enactment of said states" required); *Upper Niobrara River Compact* ("action of the Legislatures" required); *Washington Metropolitan Area Transit District* ("adopt[ion] by each of the signatories" required); *Western Regional (Higher) Education Compact* ("subsequent action of the respective legislatures" required).

approval by Resolution of Congress, pursuant to the Compact Clause. The amendment provisions of many bi-state compacts generally mirror the amendment provision of Article IV of the DRPA Compact.

This case involves the question whether "implied amendment" of a compact may be validly recognized by the state judiciary based solely on state legislation that not only does not specifically mention the bi-state compact entity, but also is concededly otherwise inapplicable to the compact entity. The holding below that a "public policy" of binding interest arbitration legislation applies to the DRPA involves judicial extrapolation of legislative intent based solely on court-perceived common "policies" of the two states that dispenses with the normal requirement of legislative intent of actual agreement by the two states to make state laws apply to a bi-state compact entity.

2. The Respondents, Fraternal Order of Police Penn-Jersey Lodge 30 and Vena.

Respondent Fraternal Order of Police Penn-Jersey Lodge 30 ("FOP") is the agent for certain of the members of the DRPA police force with respect to collective bargaining over terms and conditions of employment. Respondent, Joseph Vena, is its former First Vice-President. The DRPA voluntarily recognized the FOP as the agent of certain DRPA police officers after, and notwithstanding that, the public employee agencies of New Jersey and Pennsylvania, as well as the National Labor Relations Board, determined that neither state labor laws nor federal labor laws apply to the DRPA.

3. The Negotiations Following Expiration of the 1992 DRPA-FOP Collective Bargaining Agreement.

Notwithstanding fourteen good faith collective bargaining sessions, the DRPA and the FOP failed to reach agreement on terms to replace their 1992 Agreement, which expired by its terms on December 10, 1995. On August 21, 1996, in accordance with their express Compact powers to set employees' compensation and terms and conditions of employment and in order to assure the continuous operation of these important interstate transportation facilities, the DRPA Board of Commissioners passed a resolution ("the Resolution") fixing the

terms and conditions of employment for DRPA police officers, all of which it had previously proposed in negotiations. In accordance with the Compact, which reserves to both states the right to submit DRPA actions to their respective Governors for veto,[6] the Resolution was submitted to the Governor of New Jersey, the Honorable Christine Todd Whitman, who did not veto it, and the Resolution became effective. (A-70a).

4. Proceedings in the New Jersey Superior Court, Law Division.

Plaintiffs filed suit on August 20, 1996, in the Superior Court, Law Division, for Camden County, New Jersey, seeking to enjoin the DRPA's implementation of the Resolution, an order requiring the DRPA to return to negotiations, and an order appointing a "mediator or other neutral entity selected by the court, to assist the parties in the negotiation process."

The DRPA filed a Motion to Dismiss styled as a Motion for Summary Judgment, which the trial judge then assigned, the Honorable Samuel Supnick, denied from the bench on December 20, 1996. The court determined that Pennsylvania and New Jersey have parallel and complementary legislation, albeit "of a different nature," that gives public employees a right to freely organize and designate representatives and also to negotiate in good faith. The issue whether the DRPA could be required to submit disputes to binding interest arbitration was not initially presented.

On June 13, 1997, the FOP filed a motion for summary judgment seeking an order requiring the DRPA to submit to *binding interest arbitration* under New Jersey law, and raised the issue whether Pennsylvania's Act 111, 43 Pa. Stat. Ann. tit. § 217.1, *et seq.* and New Jersey's Police and Firefighters Interest Arbitration Reform Act, N.J. Stat. Ann. 34:13A-15, *et seq.* were sufficiently similar to constitute an amendment to the DRPA Compact or were otherwise applicable to the DRPA. On November 3, 1997, the Honorable Allan P. Vogelson determined that, although neither the Pennsylvania nor the New Jersey state statutes providing for binding arbitration apply to

6. New Jersey alone enacted legislation implementing this veto power. N.J. Stat. Ann. 32:3-4a-c.

the DRPA, the Pennsylvania and New Jersey police interest arbitration provisions are "parallel and complementary" and, therefore, constitute, in effect, an "implied amendment" to the DRPA Compact that requires DRPA police labor disputes to be submitted to binding arbitration. Judge Vogelson ordered that "if the Parties remain at impasse the Court 'can and will' order binding interest arbitration." (Appendix D, A-20a-21a).[7]

By Order dated February 17, 1998 (A-16a-17a), the trial court denied the DRPA's Motion for Reconsideration, even though it acknowledged in its January 23, 1998, bench opinion that there are many obvious, "specific" material "differences" between the Pennsylvania and New Jersey statutes in application, procedure, and legal standards governing interest arbitration. However, in construing the Compact and this state legislation to include binding arbitration, the court, in its January 23, 1998, bench opinion, gave controlling weight to its determination that New Jersey and Pennsylvania share a general "policy" of "*dispute resolution without a strike*":

> . . . [S]implistically the policy is dispute resolution without a strike, providing a vehicle by which that can be done. That's the stated policy and I so find, and I find that they are substantially similar for that purpose.
>
> While acknowledging that there are specific, but — I hesitate to use the word unimportant — recognizing that they are — there are differences that don't change the policy — do not change the policy.

5. Proceedings in the New Jersey Superior Court, Appellate Division.

On the DRPA's timely appeal, the New Jersey Superior Court, Appellate Division, affirmed, noting "the public importance of this issue" (A-7a at n. 4). The Appellate Division did not question that the DRPA Compact "is a law of the Union" or that its interpretation "is a question of federal law" (A-1a). The court noted, but did not give effect to, the DRPA Commissioners' express power under the Compact to "hire or employ" such agents and employees as it may require for the performance of its duties and to "fix and determine their

7. *See* Appendix C for Trial Court's December 19, 1997 Order.

qualifications, duties and compensation." (A-8a). The court acknowledged that "neither creator state can unilaterally impose additional duties, powers or responsibilities upon the DRPA" (A-9a), and that "[f]or single state jurisdiction to be exercised over the DRPA there must be complementary state legislation" or, in an alternative formulation, "complementary or parallel state legislation" (A-8a-9a).

The Appellate Division nonetheless departed from 75 years of bi-state compact jurisprudence and applied an unusually expansive legal standard for determining what constitutes such "complementary state legislation." The court held that to be applicable to a compact entity such as the DRPA, as an amendment to the Compact, the "parallel or complementary state legislation" of New Jersey and Pennsylvania *"need not be nearly identical" and need not even "specifically apply to the agency."* (A-9a). An amendment to an interstate compact may simply be implied, it held, so long as some common "public policy" can be discerned in both states' legislation — even though the statutory scheme of each is not even applicable to the bi-state entity in question (A-9a):

> This parallel or complementary legislation need not be nearly identical and specifically apply to the agency. *Rather, the public policy of both states*, articulated in parallel statutes that are substantially similar but do not specifically include defendant, *is applicable to a bi-state agency, although the statutory scheme of each is not.*

The Court dispensed with any requirement of express statutory language or legislative history evincing the states' specific agreement to apply particular corresponding legislation to the bi-state compact entity. (A-14a). The court held that, here, a general "policy of dispute resolution without a strike," which the courts divined in the two states' statutes, by itself sufficed to warrant application of the state "policies" to a Congressionally approved bi-state compact entity to which, admittedly, *neither* state's law was intended by the respective state legislatures to apply. In applying the standard, the New Jersey court also ignored definitive Pennsylvania Supreme Court authority that Pennsylvania's Act 111, on which it relied as the source of Pennsylvania's assumed "policy," does not, in

fact, guarantee all Pennsylvania public sector police employees the right to interest arbitration and does not apply to entities such as the DRPA. For example, binding arbitration has been held *inapplicable* to police officers of the Philadelphia Housing Authority. *See Philadelphia Housing Auth. v. PLRB*, 508 Pa. 576, 585, 499 A.2d 294, 299-301 (1985). The court acknowledged, but chose to ignore, "some differences" in scope, nature and applicability of interest arbitration for police officers, between the New Jersey and Pennsylvania statutes and relied, instead, on its broad determination that *"each state has made a policy decision in favor of public interest arbitration for police officers."* (A-12a). To characterize the states' respective statutes as "parallel," the New Jersey court was forced to minimize Pennsylvania's lack of criteria required to be considered by interest arbitrators and to dismiss New Jersey's detailed specification of criteria that arbitrators are required to consider as nothing more than "a codification of the factors any competent public interest arbitrator would apply." (A-13a-14a).

In effect, the court fashioned and applied a doctrine of "implied" interstate compact amendment, in which a court of one compact party is authorized to "imply" remedies and procedures from the general laws of the compact states without specific warrant in the legislative history and statutes of either of the creator-states.[8] In identifying the common "policy" required under its newly-fashioned standard for "parallel and complementary" legislation, the Appellate Division conflated the right to "negotiate" with the right to interest arbitration, and, in one passage,[9] identified as the controlling "common

8. The Appellate Division relied on the New Jersey Supreme Court's earlier decision in *International Union of Operating Engineers, Local 68 v. Delaware River and Bay Auth.*, 147 N.J. 433, 688 A.2d 569, *cert. denied*, 522 U.S. 861 (1997), which addressed the applicability to a New Jersey-Delaware compact entity of certain state labor legislation of Delaware and New Jersey.

9. The New Jersey courts variously formulated this "common public policy." The appellate court formulated the supposed "common policy" as (a) "public interest-arbitration for police officers," or (b) that "public employees are entitled to engage in collective bargaining." The trial court identified the "common policy" as simply "dispute resolution without a strike."

policy" the *"basic public policy of each state that their public employees are entitled to engage in collective negotiations with their employer"* (A-14a):

> Although we discern some differences in each state's legislation governing public employer-employee labor disputes, we conclude that these differences do not negate the *basic public policy of each state that their public employees are entitled to engage in collective negotiations with their employer*. The discrepancies are not so significant to render the two statutory schemes substantially dissimilar. Thus, the New Jersey statutes and the Pennsylvania statutes are complementary and parallel.

The court gave no weight to the fact that neither Pennsylvania's nor New Jersey's statute specifically applied to the DRPA and likewise gave no effect to the express Compact provision that confers on DRPA Commissioners the power to set employees' compensation. Instead, the court concluded that New Jersey courts are free to substitute for the decisions of the appointed DRPA Commissioners, exercising express Compact powers, the decisions of New Jersey court-appointed arbitrators operating under a hybrid arbitration procedure and standard to be fashioned by a state court from the two states' statutes, neither of which, admittedly, was ever intended by the respective state legislatures to apply to the DRPA.

The Supreme Court of New Jersey denied the DRPA's petition for certification without opinion by Order dated December 7, 1999 (A-22a).

REASONS FOR GRANTING THE WRIT

I. The Court Should Grant Certiorari to Settle an Important and Frequently Recurring Question of Federal Law Involving the Appropriate Legal Standard for Interpreting Compacts on Which the Courts of Pennsylvania, New Jersey, New York, and Delaware, and the Federal Courts of Pennsylvania, New York, and Maryland are Split.

This case involves the appropriate legal standard for determining when states have agreed to amend an interstate

compact by enacting parallel legislation, an important and frequently recurring question of federal law at the intersection of state and federal sovereignties.

The Compact Clause provides that "[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State . . . ." U.S. Const. art. I, § 10, cl. 3. The Court has said that "congressional consent transforms an interstate compact within [the Compact] Clause into a law of the United States." *Cuyler v. Adams,* 449 U.S. 433, 438 (1981); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518, 566 (1852) ("This compact, by the sanction of Congress, has become the law of the Union"). The interpretation of an interstate compact thus presents a federal question. *See Delaware River Joint Toll Bridge Comm'n v. Colburn,* 310 U.S. 419, 427-28 (1940).

"A compact entered is an obligation which as long as it exists, diminishes the freedom of the state to act independently in a particular sphere of interest. . . ." Marian E. Ridgeway, *Interstate Compacts, A Question of Federalism* 298 (1971). To the extent that this Court has federalized the interpretation of inter-state compacts it recognizes a further derogation of state sovereignty under the Compact Clause. The Court has observed that "by vesting in Congress the power to grant or withhold consent . . . the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative State action that might otherwise interfere with the full and free exercise of federal authority." *Cuyler,* 449 U.S. at 439-40 (citing Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution – A Study in Interstate Adjustments,* 34 Yale L.J. 685, 694-95 (1925). Thus, this Court has noted that "unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." *Texas v. New Mexico,* 462 U.S. 554, 564 (1983); *see also Texas v. New Mexico,* 482 U.S. 124, 128 (1987); *Arizona v. California,* 373 U.S. 546, 565 (1963).

These cases treat an interstate compact as a federal statute, and thus employ ordinary rules of statutory construction in its interpretation. The most important and well-established

of those rules is that, if possible, the Court will undertake a plain-language reading of the terms of a compact. *See Cuyler,* 449 U.S. at 446-447; *see also Carchman v. Nash,* 473 U.S. 716, 724-26 (1985); *United States v. Utah, Nevada & California Stage Co.,* 199 U.S. 414, 423 (1905). The need for a uniform federal standard for determining when states have acted to amend a compact is particularly acute, because state courts (as well as federal courts) in co-creator states are routinely called upon to apply a variety of state legislation to bi-state compact entities, and, short of corrective state legislation which is doubly difficult to enact and problematic, only this Court has the power to resolve the conflicts that result.

In interpreting the requirement of Article IV of the Compact for "action of either state . . . concurred in by the legislation of the other" — the standard compact amendment provision that is employed in numerous existing interstate compacts[10] — and in adopting a standard of "amendment by implication" for bi-state compact interpretation, the New Jersey courts below have departed from well-established federal principles of statutory construction, have all but dispensed with the requirement of *agreement* by compact partners for amendment, and have devised a recipe for dangerous discord between compacting states that is potentially destructive of the utility of bi-state compacts. The New Jersey courts have not only fashioned and applied the wrong standard, but also have ordered relief that is plainly inconsistent with the express terms of the Compact.

The Court should grant the petition to resolve a conflict on the appropriate legal standard, among the state and federal courts of New Jersey, Pennsylvania, New York and Delaware, and to establish a uniform federal standard in this important field of federal compact interpretation.

A. New Jersey Decisions Conflict with Controlling Decisions of New York, Pennsylvania and Delaware State Courts on the Propriety of the "Implied Amendment" Standard.

In adopting a free-wheeling "implication" standard for defining the "parallel and complementary" state legislation

10. See footnote 5, *supra.*

requirement ("New Jersey Implied Amendment Rule"), the New Jersey courts have misconstrued and dispensed with the requirement of Article IV of the Compact, which requires *"action of either State concurred in by the legislation of the other,"* and have cemented the direct conflict of New Jersey decisions with decisions of New York, Pennsylvania, and Delaware, New Jersey's sovereign partners in other important bi-state compact entities.

1. New Jersey v. New York Law.

In sharp contrast with the New Jersey court's standard, which dispenses with the central requirement of evidence of legislative *"agreement,"* New York has held that the fact that "two States have evinced the same, or similar, public policy . . . by enacting similar . . . laws . . . is *not* sufficient . . . to render [a compact] properly amended or supplemented . . ." *Malverty v. Waterfront Comm'n of New York Harbor,* 71 N.Y.2d 977, 529 N.Y.S.2d 67, 524 N.E. 2d 421 (1988). In that case, a former licensed dockworker sought to compel the Waterfront Commission of New York Harbor to restore him to the Longshoreman's register, contending that similar legislation enacted by the two compact states, New York and New Jersey, entitled convicted state offenders such as Malverty to certain public employment opportunities. As in this case, the "parallel" New York and New Jersey employment discrimination legislation in *Malverty* did not "refer . . . to the Waterfront Commission" and contained no express statement that the state legislature intended to amend or supplement the Waterfront Commission Compact. *Malverty,* 71 N.Y.2d at 980. The New York Court refused to apply the state legislation to the Waterfront Commission solely on the basis of "the same, or similar, public policy regarding employment opportunities for former inmates . . ." *Id.*

As the district court correctly stated in *Baron v. Port Authority of New York and New Jersey,* 968 F. Supp. 924, 928 (S.D.N.Y. 1997), quoting *Malverty,* ". . . in New York it has been established that in order for a law to be applicable to [the Port Authority], the statute must expressly state that 'the legislation is amending a certain portion of the 'Compact' and

that the new law would take effect upon the enactment into law by New Jersey of legislation having an effect identical to New York's legislation.'" *Id.* Other New York state decisions are to the same effect. *Bailey v. Port Auth. of New York & New Jersey,* No. 40149-92 (N.Y. Sup. Ct. May 18, 1994), *aff'd,* 627 N.Y.S.2d 921 (N.Y. App. Div. 1995).

2. New Jersey vs. Pennsylvania Law.

New Jersey's "Implied Amendment" Rule also conflicts with applicable Pennsylvania decisions on this point. In *Nardi v. Delaware River Port Auth.,* 88 Pa. Commw. 558, 490 A.2d 949 (1985), a DRPA police officer sued the DRPA for supplementary disability benefits under Pennsylvania law. Although both the Pennsylvania law and its New Jersey counterpart were designed for a "similar purpose", *i.e.* providing disability benefits to the DRPA's police officers, the Commonwealth Court of Pennsylvania ruled that neither state's statute could be applied to the DRPA because New Jersey's and Pennsylvania's legislatures had not enacted substantially similar laws. The Pennsylvania Commonwealth Court held that even state statutes of compact states that are premised on the same public policy, and that were both made *specifically* applicable to the DRPA, were not substantially similar and could not be imposed on the bi-state entity because Pennsylvania's statute required that the DRPA "shall" provide the disability benefits, while the New Jersey statute provided that the DRPA "may" provide such benefits. As the Court said, comparing the two statutes, "[t]he Pennsylvania legislature has demonstrated that it does not concur" with the New Jersey legislature. *Nardi,* 88 Pa. Commw. at 564, 490 A.2d at 952. In contrast with New Jersey, Pennsylvania also requires precise evidence of *agreement* between the states on the application of specific statutory measures.

The conflict between Pennsylvania and New Jersey law is further aggravated in this case by the New Jersey court's misinterpretation of Pennsylvania law. New Jersey not only defines differently the applicable legal standard for "complementary or parallel" state legislation for compact amendment, it also misconstrued the scope of Pennsylvania's Act 111, the

Pennsylvania statute it found "parallel and complementary." Under Pennsylvania law, Act 111 is clearly inapplicable to the DRPA. In *Philadelphia Housing Auth. v. PLRB,* 508 Pa. 576, 499 A.2d 294 (1985) ("PHA"), the Pennsylvania Supreme Court squarely held *that Act 111, Pennsylvania's police interest arbitration law, does not even apply to all Pennsylvania domestic police departments and authorities.* Act 111 covers only "[p]olicemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth . . ." 43 Pa. Stat. Ann. tit. § 217.1. A "political subdivision" for this purpose is "any county, city, borough, incorporated town, township, school district, vocational school district and county institution district." The Pennsylvania Supreme Court there held that the Philadelphia Housing Authority was not a "political subdivision of the Commonwealth," and that PHA police are not within the scope of Act 111.

Under the same definition, the DRPA is neither the "Commonwealth" nor a "political subdivision of the Commonwealth" and its police are clearly outside the scope of Act 111. The New Jersey court thus misidentified and mischaracterized Pennsylvania's "policy," an error that exposes the danger of New Jersey's implied amendment rule that state "policies" will be misdefined by the other state's courts. As construed definitively by Pennsylvania courts, Pennsylvania legislation does not reflect an unambiguous intent universally to require binding interest arbitration for all Pennsylvania police authorities. Pennsylvania's "parallel" legislation reflects, instead, a discriminating resort to binding interest arbitration that the New Jersey courts missed.

3. New Jersey vs. Delaware Law.

The New Jersey "Implied Amendment" Rule also conflicts with the standard applied by Delaware, which is a party with New Jersey in the Delaware River & Bay Authority. In *Delaware River & Bay Auth. v. Carello,* 43 Del. Ch. 213, 222 A.2d 794 (1966), which antedated New Jersey's enactment of legislation that entitled New Jersey public employees to collective bargaining rights, the court held that "power over Authority employees . . . may not be impaired or diluted by

the unilateral action of one member to the compact." *Carello,* 222 A.2d at 799. The recent conflict between Delaware and New Jersey relating to the applicability of the states' respective laws is, once again, the result of the very decision relied by the court below, *International Union of Operating Eng'rs Local 68 v. Delaware River Bay Auth.,* 147 N.J. 433, 688 A.2d 569 (1997), *cert. denied,* 522 U.S. 861 (1997), in which the New Jersey Supreme Court, using the same new and radical technique of "implied common policy," found that the DRBA is bound by "parallel" New Jersey and Delaware law relating to the right to representation in collective bargaining negotiations. The decision below and the relatively recent *Local 68* decision illustrate the recurring nature and seriousness of the issue and the conflict.

B. The New Jersey Rule Conflicts with Applicable Federal Court Precedent in the Affected States of New York and Pennsylvania on the "Implied Amendment" Standard.

Every lower federal court that has considered New Jersey's "Implied Amendment" Rule has rejected it.

The United States District Court for the Eastern District of Pennsylvania in *Pilla v. DRPA,* 1999 WL 45918, (Newcomer J.) (E.D. Pa. May 7, 1999), recently rejected the contention that Pennsylvania's Human Relations Act and New Jersey's Law Against Discrimination are "substantially similar." The Court observed: "Plaintiff tries to salvage his claim by arguing for the more permissive "substantial similarity" test applied by some New Jersey courts," *Id.* at *4, but wisely declined to adopt the "Implied Amendment" Rule of *International Operating Eng'rs Local 68 v. Delaware River and Bay Auth., supra:*

> [P]laintiff can point to no federal court that has adopted New Jersey's more permissive view, *and this Court has not been persuaded to become the first.*

Pilla, at 4.

Because of these conflicts, future litigation in the Pennsylvania federal courts on labor and employment and other issues may subject the DRPA to one set of rules, while litigation in New Jersey state courts threatens to subject the DRPA

to another, with the prospect of forum-shopping, potential state-state and state-federal conflicts, and contradictory judicial directives with respect to the same subjects. On this federal issue, the lower federal courts are not bound by state court determinations. The state courts are not bound by decisions of the lower federal courts. Only this Court can resolve the conflict and establish a uniform federal standard.

Nor is the federal-state conflict limited to New Jersey and Pennsylvania. New York federal courts have also rejected New Jersey's "Implied Amendment" approach in favor of the conventional approach that requires "identical" legislation — with equally serious consequences for important New Jersey-New York bi-state entities such as the Port Authority of New York and New Jersey and the Waterfront Commission of New York Harbor. As the district court correctly pointed out in *Baron v. Port Authority*, 968 F. Supp. 924, 929 (S.D.N.Y. 1997), "[t]hat the two states have evinced the same, or similar, public policy regarding employment opportunities . . . by enacting similar . . . laws is not sufficient under the express terms of the Compact" to make the bi-state entity subject to the law of either state.

The adoption of New Jersey's "Implied Amendment" Rule places New Jersey in direct, recurring, and vexing conflict with both the state and federal courts in each of its neighboring states - New York, Pennsylvania and Delaware — with which New Jersey has longstanding, significant interstate compacts for interstate transportation and port facilities.

New Jersey's "Implied Amendment" Rule, moreover, creates a broader national conflict among the state courts on an important issue of federal and state relations that warrants review by this Court.[11]

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11. The New Jersey "Implied Amendment" Rule conflicts with the legal standard adopted by state and federal courts in other jurisdictions.

For example the Washington Supreme Court, in *Salmon for All v. Department of Fisheries*, 118 Wn. 2d 270, 821 P.2d 1211, 1215-16 (1992), rejected the applicability to the Columbia River Compact of state statutes requiring open public meetings, holding that "interstate compact affairs are only subject to state law if the compact's terms agree so." *See also Klickitat County v. State*, 71 Wn. App. 760, 862 P. 2d 629, 732-33 (1993) (rejecting

II. The New Jersey Courts' "Implied Amendment" to the DRPA Compact, a "Law of the United States," Violates the Supremacy Clause by Erroneously Engrafting Binding Arbitration Procedures that Conflict with, and Subordinate, Controlling Powers Conferred by the DRPA Compact.

By adopting an "implied amendment" to the Compact, that requires the DRPA to submit labor disputes to binding arbitration, the New Jersey courts have engrafted onto the DRPA Compact arbitration provisions that directly conflict with the Compact's provision that confers exclusive power to fix employees' compensation on the DRPA's Commissioners. As a "law of the United States" and the legal charter of the DRPA, the Compact enjoys the status of a "supreme law of the land." Judges of the State of New Jersey are bound by it. They are not free loosely to infer "amendments" to it based on mere state policy similarities, or to substitute for express Compact provisions hybrid provisions that have no conventional support in the legislative intent of the respective state legislatures short of agreement to amend it.

A strong showing of specific intent by the respective legislatures to amend the Compact should be required before binding provisions of a federal law may be ignored and undermined. Particularly where, as in this case, such an implied "amendment" actually *conflicts* with an express provision of the Compact, a uniform federal standard should require (i)

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applicability to interstate compact entity of state land use requirements).

Federal courts have generally refused to impose additional state-law duties on bi-state compact entities merely because the co-creators states have passed laws on the general subject that are similar. *Seattle Master Builders Ass'n. v. Pacific Northwest Electric Power & Conservation Planning Council,* 786 F.2d 1359, 1371 (9th Cir. 1986), *cert. denied,* 479 U.S. 1059 (1987) ("environmental impact assessment" requirement of parallel Washington and Montana environmental statutes held inapplicable to compact entity); *C.T. Hellmuth & Assocs., Inc. v. Washington Metro. Area Transit Auth.,* 414 F. Supp. 408, 409-410 (D. Md. 1976) (generally comparable statute makes information laws inapplicable to Compact entity because of settled rule that "one party may not enact legislation that would impose burdens on the compact entity absent the concurrence of the other signatories").

concurrent state legislation identifying the compact, and (ii) clear evidence of specific legislative intent and agreement on the part of both states to amend it, consistent with the standard governing compact amendment provisions. Only by requiring such conventional indicia of legislative intent can courts facing this question be certain that the states have "agreed." Cf. *Cort v. Ash*, 422 U.S. 66 (1975).

New Jersey's action in this case, judicially requiring binding interest arbitration, subordinates an express provision of federal law to state laws and constitutes a classic violation of the Supremacy Clause of the Constitution of the United States by ordering "relief inconsistent with its express terms." *See Texas v. New Mexico*, 462 U.S. 554, 564 (1983).

III. The Questions Are Important And Have Far-Reaching Practical Consequences.

This case raises a substantial, frequently recurring question under the United States Constitution and federal law, involving the proper method of amending interstate compacts and altering the basic powers of bi-state compact entities. The New Jersey courts below commented on the "public importance" of the case (A-7a), and the New Jersey decision casts a long shadow over major New Jersey, New York, Pennsylvania and Delaware bi-state compact agencies that operate important interstate transportation facilities. In one stroke, without support in legislative intent, the New Jersey courts below have removed from the DRPA Commissioners (who by Compact have this express power), and from the Governor of New Jersey (who by veto power exercises control over all such issues), control over an important component of cost and a significant segment of the budget of important interstate bridge and commuter rail facilities, and has substituted an arbitrator.

New Jersey's "implied amendment" standard invites a tide of litigation against the DRPA and other similar compact entities in the New Jersey state courts that Pennsylvania, New York, Delaware, and New Jersey legislatures never authorized. On the basis of the New Jersey "Implied Amendment" Rule, forum-shopping plaintiffs are now free to contend that several additional volumes of state statutes are applicable to

New Jersey's important bi-state entities. Potentially at stake in this case are questions of the applicability to the DRPA and other bi-state compact entities of other state laws, such as domestic zoning laws, environmental laws, navigation laws, laws governing the height, design and construction of bridges and like state legislation.

The New Jersey "Implied Amendment" Rule is fundamentally unsound. It involves the state judiciary in a drifting legislative enterprise that is not anchored in conventional legislative intent. With nothing but "public policy" for guidance, courts applying New Jersey's rule are required to fashion detailed new hybrid legislative schemes that steer through two states' statutory frameworks totally without the aid of — and even contrary to — specific legislative intent of both states. The New Jersey court's mistake in misidentifying "Pennsylvania public policy" in this case points up another flaw in the rule, which requires state court judges of one compact partner to review unfamiliar state legislation and provide a sure-footed reading of the "policy" of the other compact state.

This case provides another excellent example of the unworkability of this rule. In attempting to apply its ruling, the trial court must synthesize from conflicting statutory elements a hybrid binding arbitration procedure that, at a minimum, answers the following questions: (1) What are the subjects of arbitration? (2) What specific factors or criteria is the arbitrator(s) required to consider? (3) Must the arbitrator(s) analyze and explain in writing the evidence in terms of the relevant factors? (4) Must an arbitrator consider public policy issues such as the effect on interstate commerce. By way of example, will the issue of subcontracting be a proper subject of binding interest arbitration? Compare *In re Local 195,* 88 N.J. 393, 443 A.2d 187 (1992) (subcontracting not subject to arbitration in New Jersey) with *City of Clariton v. PLRB,* 107 Pa. Commw. 561, 528 A.2d 1048 (1987) (subcontracting held subject to arbitration in Pennsylvania). Without legislative intent from either state to point the way, which state's law will control?

New Jersey's legal standard is a substantial departure from established principles of interstate compact interpretation. It is respectfully submitted that the Court should grant

review to resolve the conflict in standards and to establish a uniform federal standard that is anchored in the legislative intent in this sensitive area of state sovereign relations.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

FRATERNAL ORDER OF POLICE
Penn-Jersey Lodge 30 and Joseph Vena, Plaintiffs-Respondents,

v.

The DELAWARE RIVER PORT AUTHORITY, Defendant-Appellant.

Superior Court of New Jersey,
Appellate Division.

Argued March 29, 1999.
Decided July 22, 1999.

Before Judges D'ANNUNZIO, CUFF and COLLESTER.

The opinion of the court was delivered by

CUFF, J.A.D.

In this appeal, we must decide whether the Delaware River Port Authority (DRPA) is required to submit to mediation or public interest arbitration in accordance with the labor laws of this State governing collective bargaining for public employees. We hold that it does and affirm the order requiring the DRPA to mediate and, if necessary, submit to public interest arbitration its contract dispute with its police officers.

The DRPA is a bi-state agency created by a Compact between New Jersey, *N.J.S.A.* 32:3-1 to -18, and Pennsylvania, *Pa. Stat. Ann.* tit. 36, §§ 3503 to 3510.7 (West 1999), and approved by Congress, *Res.* 26, 47 *Stat.* 308 (1932).[1] The Compact declares that the interests of both states will be best served by consolidating two existing commissions and granting to the combined authority additional powers and authority regarding an existing bridge across the Delaware River and additional transportation facilities between the two states.

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1. Such an interstate compact is "law of the Union," *Delaware River Joint Toll Bridge Comm'n v. Colburn,* 310 U.S. 419, 427, 60 *S.Ct.* 1039, 1040, 84 *L.Ed.* 1287, 1289 (1940), whose interpretation is a question of federal law. *Cuyler v. Adams,* 449 U.S. 433, 438 n. 7, 101 *S.Ct.* 703, 707 n. 7, 66 *L.Ed.*2d 641, 648 n. 7 (1981); *Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden,* 111 *N.J.* 389, 397, 545 A.2d 127 (1988).

N.J.S.A. 32:3-1. Its mission is to develop, operate and maintain transportation facilities between the two states. *N.J.S.A.* 32:3-1, -2. It operates and maintains the Betsy Ross, Benjamin Franklin, Walt Whitman and Commodore Barry Bridges which span the Delaware River and the PATCO high-speed rail line between Philadelphia and suburban Lindenwold, New Jersey. It is a "body corporate and politic," constituting "the public corporate instrumentality" of the two states and "exercising an essential governmental function." *N.J.S.A.* 32:3-2.

The DRPA is authorized to appoint, hire or employ "such agents and employees as it may require for the performance of its duties, . . . and fix and determine their qualifications, duties and compensation." *N.J.S.A.* 32:3-5(e). To that end, the DRPA employs seventy-eight police officers. The DRPA voluntarily recognized plaintiff, Fraternal Order of Police, Penn-Jersey Lodge 30 (Lodge 30), as the representative of these officers, and the parties have negotiated and executed collective bargaining agreements for over twenty years.

The parties' most recent agreement expired in 1996 and they commenced negotiations regarding a new agreement. When their negotiations reached an impasse, the DRPA imposed its final offer on Lodge 30. Plaintiffs[2] sought to enjoin the DRPA from implementing its terms and conditions of employment, to require the continuation of good faith bargaining, to appoint a mediator to assist the process, and for "such further relief that this Court deems necessary."

The DRPA moved for summary judgment arguing that, despite public employees' right to organize and negotiate collectively in both New Jersey and Pennsylvania, there was no governmental agency to regulate the parties' negotiations. Therefore, the DRPA inferred that neither mediation nor public interest arbitration was available to resolve this dispute. Moreover, the DRPA contended that judicial oversight would be unworkable and New Jersey and Pennsylvania had not agreed to that procedure.

The DRPA also argued that, despite its recognition of Lodge 30 as the collective bargaining agent for the police

2. In addition to Lodge 30, its president, Joseph Vena, is also a plaintiff.

officers, it was under no legal duty or obligation to negotiate with Lodge 30. Therefore, when the parties failed to reach an accord on a new contract, it was free to implement the terms and conditions of employment which it deemed suitable. The DRPA noted that it submitted its minutes to Governor Whitman and the resolution became effective when she declined to veto the resolution.

The DRPA's motion for summary judgment was denied. Judge Supnick determined that Pennsylvania and New Jersey had "parallel or complementary legislation of a different nature, but which ... nevertheless recognizes those same rights and clearly gives public employees a right to freely organize and designate representatives and also to negotiate in good faith." In response to the DRPA's contention that there was no public agency designated to oversee the negotiations, he held that the court had "the inherent power to deal with matters of that nature."

Six months later, plaintiffs filed a motion for summary judgment on count one of their amended complaint which sought a declaratory judgment that the DRPA had violated the New Jersey constitutional guarantee of public employees to organize and parallel legislation of both states recognizing and implementing this right. They requested an order requiring the parties to negotiate an impasse-resolution procedure featuring interest arbitration under court supervision. Plaintiffs contended this relief was appropriate because New Jersey and Pennsylvania have elected to resolve such impasses by public interest arbitration. In support of their motion, plaintiffs submitted a certification of Clyde W. Summers, the Jefferson B. Fordham Professor Emeritus at the Law School of the University of Pennsylvania, who opined that interest arbitration between public employees and public employers was appropriate and desirable. He also offered an analytical framework to determine whether two states have similar and complementary policies on collective bargaining by police officers and dealing with impasses. Finally, he offered the opinion that the New Jersey and Pennsylvania statutory schemes were "substantially the same."

Defendant responded with a cross-motion for summary judgment or, in the alternative, a motion to strike the Summers report. Substantively, the DRPA argued that not only the policies must be similar but also "the actual legislation" must be similar. The DRPA also contended that requiring it to submit to binding interest arbitration would interfere with the Compact's provision for the Governor's right to veto any action and thus would violate the Supremacy Clause of the United States Constitution.

Prior to ruling on the cross-motions, Judge Vogelson requested the parties "to make one additional attempt to resolve your dispute voluntarily" by reaching an agreement on the terms and conditions of an agreement or on the procedure to resolve an impasse. When the parties failed to reach any agreement, Judge Vogelson proceeded to grant plaintiffs' motion for summary judgment and deny the DRPA's cross-motion. At that time, Judge Vogelson rendered his opinion on the pending summary judgment motions.

Initially, he found that Professor Summers was "a highly qualified expert." He also accepted Professor Summers' opinion "as having credibility and substance."[3] In addition, he stated that Judge Supnick's prior ruling concerning the complementary nature of the New Jersey and Pennsylvania laws governing public employer collective bargaining was the law of the case.

Judge Vogelson also relied on *International Union of Operating Eng'rs, Local 68 v. Delaware River and Bay Auth.*

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3. Defendant correctly argues that a trial court should not rely upon expert opinions on New Jersey law. *Healy v. Fairleight Dickinson Univ.*, 287 *N.J.Super.* 407, 413, 671 A.2d 182 (App.Div.), *certif. denied*, 145 *N.J.* 372, 678 A.2d 713, *cert. denied*, 519 U.S. 1007, 117 *S.Ct.* 510, 136, *L.Ed.*2d 399 (1996); *State v. Grimes*, 235 *N.J.Super.* 75, 80, 561 A.2d 647 (App.Div.), *certif. denied*, 118 *N.J.* 222, 570 A.2d 976 (1989). Judge Vogelson's acceptance of the Summers opinion does not require a reversal because his decisions, particularly on the motion for reconsideration, reveal an independent review of each statutory scheme and an independent determination of the complementary and parallel nature. Furthermore, Summers and Weinstein did offer an opinion on the law of another state, which may be an appropriate subject of expert testimony. *Grimes, supra; Max v. Max*, 123 *N.J.L.* 580, 589, 10 A.2d 163 (Sup.Ct.), *aff'd o.b.*, 125 *N.J.L.* 271, 15 A.2d 616 (E. & A. 1940).

(Local 68), 147 *N.J.* 433, 688 A.2d 569, *cert. denied*, ____ *U.S.* ____, 118 *S.Ct.* 165, 139 *L.Ed.*2d 108 (1997), in which the Court required defendant, a bi-state agency of New Jersey and Delaware, to recognize and engage in collective negotiations with plaintiff union, since the statutes of the two states authorizing collective bargaining for public employees were substantially similar.

Judge Vogelson reasoned that the members of plaintiff Lodge 30 were police officers who patrolled in both New Jersey and Pennsylvania, enforced the laws of both states, and were subject to the same dangers as other police officers. Since both New Jersey and Pennsylvania "provide for a procedure in just this type of case," the DRPA should also. Judge Vogelson also concluded he had the authority to order interest arbitration. Nevertheless, he did not do so; he decided that the parties should select and meet with a mediator "from a list to be provided by the American Arbitration Association [AAA] in accordance with that Agency's rules and regulations," to develop "a procedure and mechanism by which they can resume good faith negotiations."

On November 21, 1997, an order was entered granting plaintiffs' motion for summary judgment on count one of their amended complaint, and denying defendant's cross-motion. The parties were ordered to select a mediator from an AAA list, and to report to the court on their progress; the order recited that "[i]f the [p]arties remain at impasse the Court can and will order binding interest arbitration."

Defendant filed a notice of motion for reconsideration dated December 5, 1997. In support of its motion, defendant submitted (1) a December 4, 1997 certification of Joy Faber, its assistant general counsel; (2) Summers' deposition of November 18, 1997; and (3) an undated opinion of its expert David Weinstein, Professor Emeritus at Temple University School of Law. Defendant's expert, Weinstein, had experience as a public interest arbitrator in Connecticut and Pennsylvania and had served as a fact finder in the 1970s for the Connecticut State Board of Mediation and Arbitration. Like Summers, Weinstein compared the New Jersey Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 to -29, with Pennsylvania

Act 111, *Pa. Stat. Ann.* tit. 43, §§ 217.1 to .10 (West 1999) (Act 111), but Weinstein disagreed with Summers' conclusion that the two acts were substantially similar.

Prior to disposition of this motion, on December 19, 1997, Judge John Fratto entered an order requiring defendant to appropriate funds for one-half of the AAA mediator's fee for three sessions, pursuant to the AAA's Grievance Mediation Rules, in order to implement Judge Vogelson's order. Judge Fratto's order also dismissed count two of the amended complaint (breach of contract), denied defendant's request to file an additional expert report, and adjourned the return date of defendant's motion for reconsideration.

Following oral argument, Judge Vogelson rendered an oral opinion on January 23, 1998. He acknowledged that he recognized Summers as an expert, but made it "clear for the record" that he read and compared the statutes of New Jersey and Pennsylvania, and found that, despite "some differences between them," they were substantially similar, complementary and parallel "in the context of this case."

The judge reviewed Weinstein's opinion and described it as "narrower, more technical and precise." The judge noted that Summers addressed the policies of the two statutes, while Weinstein emphasized their "terms of implementation," but "they both agree on the purpose of the legislation." Declining to discuss each difference between the statutes raised by Weinstein, the motion judge concluded that "simplistically the policy is dispute resolution without strike, providing a vehicle by which that can be done. . . . [T]hey are substantially similar for that purpose." The judge reasoned that the differences between the statutes did not change this policy.

Furthermore, Judge Vogelson rejected defendant's argument that his decision negated the Governor's veto power, since the parties were free to agree on a procedure that did not involve the expenditure of funds. The judge also noted that "at this juncture, we don't even know whether there will be interest arbitration." If at some time defendant "is prohibited from spending funds . . . that will be presented to the Court and another decision will be made."

On February 17, 1998, an order was entered denying the motion for reconsideration. On that same date defendant filed a timely notice of appeal from this order and the orders of November 21 and December 19, 1997.[4]

On appeal, the DRPA contends, and State of New Jersey as *amicus curiae* concurs, that the imposition of mediation and binding arbitration violates its right to manage its own affairs in accordance with the Compact.

The DRPA argues that a bi-state compact, approved by Congress under the Compact Clause, *U.S. Const.* art. I, § 10, cl. 3, becomes a law of the United States. *Cuyler, supra,* 449 *U.S.* at 440, 101 *S.Ct.* at 708, 66 *L.Ed.*2d at 649. The DRPA cites the Supremacy Clause, which provides that the laws of the United States "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *U.S. Const.* art. VI, cl. 2. It reasons that, as law of the United States, the clear mandate of *N.J.S.A.* 32:3-5(e), authorizing defendant to establish the duties and compensation of its employees, must be enforced.

The DRPA also contends, again with support from *amicus,* that the imposition of mediation and arbitration upon it interferes with the policy-making authority of the New Jersey and Pennsylvania Legislatures, and the authority of the New Jersey Governor to veto the action of any of defendant's New Jersey commissioners. *N.J.S.A.* 32:3-4. Defendant cites *N.J. Const.* art. III, ¶1, which divides the powers of government into the legislative, executive and judicial branches, and provides: "No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."

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4. Arguably, the February 17, 1998 order is interlocutory because the parties have not been ordered to submit their dispute to public interest arbitration. However, given the public importance of this issue and the need for guidance to the parties involved in this dispute, we proceed to address the merits of the legal issues before us. *Delaware River and Bay Auth. v. International Org. of Masters, Mates & Pilots* (*International Org.*), 45 *N.J.* 138, 142, 211 A.2d 789 (1965).

The DRPA also argues that only "the adoption by both Compact States of nearly identical State legislation expressly intended to apply to [defendant]" may change the Compact and establish binding interest arbitration.

The DRPA is a public corporate body of two states: New Jersey and Pennsylvania. *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 398, 545 A.2d 127; *Yancoskie v. Delaware River Port Auth.,* 155 *N.J.Super.* 1, 4, 382 A.2d 77 (App.Div. 1977), *aff'd,* 78 *N.J.* 321, 395 A.2d 192 (1978); *see also Yancoskie v. Delaware River Port Auth.,* 478 Pa. 396, 387 A.2d 41 (1978). Thus, neither creator state can unilaterally impose additional duties, powers or responsibilities upon the DRPA. *Eastern Paralyzed Veterans, supra; Bell v. Bell,* 83 *N.J.* 417, 424-25, 416 A.2d 829 (1980); *Nardi v. Delaware River Port Auth.,* 88 *Pa.Cmwlth.* 558, 490 A.2d 949, 950 (1985). For single state jurisdiction to be exercised over the DRPA, there must be complementary state legislation. *Eastern Paralyzed Veterans, supra; Nardi, supra.*

Among its many powers, the DRPA has the power

> (e) to appoint, hire or employ . . . such other officers and such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties and compensation.
>
> [*N.J.S.A.* 32:3-5(e).]

The DRPA is also empowered

> (n) To exercise all other powers not inconsistent with the constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, . . . and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.
>
> [*N.J.S.A.* 32:3-5(n).]

Further, the DRPA also has been bestowed with

> such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.
>
> [*N.J.S.A.* 32:3-5.]

Although the DRPA contends it is not obliged to recognize Lodge 30 as the representative of its police officers or to negotiate with Lodge 30 or its members, it concedes that it has recognized Lodge 30 as the bargaining agent and has entered agreements over a twenty year period with Lodge 30 as the representative of the police officers. The DRPA contends, however, that these voluntary acts do not provide any basis to impose on it the impasse-resolution procedures applicable to public employers in New Jersey to resolve the current impasse between it and its police officers.

Although neither of the creator states of a bi-state agency may "unilaterally impose its legislative will on the bi-state agency," *Bunk v. Port Auth. of New York and New Jersey,* 144 *N.J.* 176, 184, 676 A.2d 118 (1996), "the agency may be subject to complementary or parallel state legislation." *Ibid.* (citation omitted). This parallel or complementary legislation need not be nearly identical and specifically apply to the agency. Rather, the public policy of both states, articulated in parallel statutes that are substantially similar but do not specifically include defendant, is applicable to a bi-state agency, although the statutory scheme of each state is not. This concept was explained in *Local 68* in the following passage:

> Although a single state may not unilaterally impose its will on a bi-state agency, the creator states together may subject the agency to complementary or parallel state legislation. Separate legislative acts are complementary or parallel if they are substantially similar in nature. Legislation is substantially similar if the creator states evidence some showing of agreement in the laws involving and regulating a bi-state agency.
>
> [*Local 68, supra,* 147 *N.J.* at 445, 688 A.2d 569 (citing *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 400-02, 545 A.2d 127).]

The New Jersey Supreme Court first applied this theory in *International Org., supra,* 45 *N.J.* at 147, 211 A.2d 789, to restrain a union from striking against a bi-state agency. The Court relied on the "historic and widely prevailing policy against strikes by public employees" which was "equally applicable in both states," although this policy was not expressed in any legislation. *Ibid.*

Eastern Paralyzed Veterans, supra, 111 *N.J.* at 391, 545 A.2d 127, involved the proposed construction in New Jersey of a mass transit terminal for train service to be operated by a subsidiary of the DRPA. The New Jersey Department of Community Affairs, which had to approve the construction plans, requested an elevator for the handicapped; plaintiff contended that the elevator was required under New Jersey law. *Id.* at 394-96, 545 A.2d 127.

The Court determined that New Jersey could not impose duties or responsibilities on a bi-state agency unauthorized by its Compact, unless there was "complementary state legislation" in each state. *Id.* at 398-99, 545 A.2d 127. The Court thus remanded to determine whether Pennsylvania would have required an elevator if the terminal had been built there. *Id.* at 400-02, 545 A.2d 127. The Court did not require that the Pennsylvania and New Jersey laws expressly provide that they applied to the DRPA. *Id.* at 400-01, 545 A.2d 127.

In *Ballinger v. Delaware River Port Auth.,* 311 *N.J.Super.* 317, 709 A.2d 1336 (App.Div.1998), this court affirmed the dismissal of plaintiff's complaint seeking relief pursuant to the Conscientious Employee Protection Act (CEPA), *N.J.S.A.* 34:19-1 to -8. We recognized that the statutes enacted by both states governing the same subject matter need not be identical. *Id.* at 324-25, 709 A.2d 1336. However, we identified four differences between the New Jersey legislation and the Pennsylvania Whistleblower Law. *Pa. Stat. Ann.* tit. 43, §§ 1421 to 1428 (West 1999), which militated against a conclusion that the acts were substantially similar. *Id.* at 327-28, 709 A.2d 1336. Those differences—CEPA covers public and private employers while the Whistleblower Law covers public employers, a different statute of limitations, a right to trial by jury in New Jersey but a bench trial in Pennsylvania, and a right to puni-

tive damages in New Jersey and compensatory damages in Pennsylvania—were so substantial that this court concluded that New Jersey and Pennsylvania are not in agreement over the applicability of CEPA or the Whistleblower Law to the DRPA. *Ibid.*

By contrast, in *Bunk, supra,* 144 *N.J.* at 181, 676 A.2d 118, an employee of the Port Authority of New York and New Jersey, a bi-state agency of New York and New Jersey, was injured while working, resulting in disability, and received a disability retirement pension from defendant. He also sought workers' compensation in New Jersey. *Ibid.* As defendant points out, the agency had agreed to provide workers' compensation benefits. *Id.* at 185, 676 A.2d 118. The Court held that *N.J.S.A.* 34:15-43, which limited workers' compensation benefits of a public employee who was receiving a disability pension for the same injury, applied, even though it did not specify that it applied to defendant. *Id.* at 180, 676 A.2d 118.

Notably, the Court declined to "decide the exact contours of New York law" on the subject. *Id.* at 185, 676 A.2d 118. Rather, it concluded that "the provisions are somewhat similar" and both "reflect a plan to coordinate disability benefits." *Ibid.* This facial similarity was enough to constitute parallel or complementary legislation of both states.

In *Local 68, supra,* 147 *N.J.* at 439, 688 A.2d 569, a union sought to require the Delaware River and Bay Authority (DRBA), a bi-state agency of New Jersey and Delaware, to recognize it as the employees' representative and engage in collective negotiations. The Compact under consideration had a clause similar to *N.J.S.A.* 32:3-5(e), giving defendant the power to appoint employees, to fix and determine their duties, compensation, and terms and conditions of employment. *Id.* at 438, 688 A.2d 569. In addition, the Appellate Division had previously ruled that New Jersey's Public Employment Relations Commission (PERC) did not have jurisdiction over the DRBA. *Delaware River & Bay Auth. v. New Jersey Pub. Employment Relations Comm'n (PERC),* 112 *N.J.Super.* 160, 166, 270 A.2d 704 (App.Div.1970), *aff'd o.b.,* 58 *N.J.* 388, 277 A.2d 880 (1971). Nevertheless, the Court in *Local 68* granted the right to recognition and collective negotiation following

the provisions of the New Jersey and Delaware statutes governing collective negotiations for public employees, neither of which specified that it applied to defendant, and concluded that, "although not identical" they were "complementary and parallel." *Local 68, supra,* 147 *N.J.* at 447, 688 A.2d 569.

Our review of each state's enactments governing police and fire labor relations, the New Jersey Police and Fire Public Interest Arbitration Reform Act (*N.J.S.A.* 34:13A-14a to -29) and the Pennsylvania Collective Bargaining by Policemen or Firemen Act (*Pa. Stat. Ann.* tit. 43 §§ 217.1 to .10 (West 1999)) (Act 111), reveals that each state has made a policy decision in favor of public interest arbitration for police officers. Certainly, there are some differences in each scheme. For example, in New Jersey, [a]rbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation." *N.J.S.A.* 34:13A-16f(4). A subject is negotiable if it "intimately and directly affects the work and welfare" of the employees; has not been preempted by statute or regulation; and "a negotiated agreement would not significantly interfere with the determination of governmental policy." *In re Local 195,* 88 *N.J.* 393, 404, 443 A.2d 187 (1982). "To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer." *Id.* at 404-05, 443 A.2d 187.

In Pennsylvania also, "the terms and conditions" of employment are proper subjects of negotiation, *Pa. Stat. Ann.* tit. 43, § 217.1 (West 1999), and arbitration. *Police Bargaining Unit of Montoursville Police Dep't v. Borough of Montoursville,* 160 *Pa.Cmwlth.* 333, 634 A.2d 830, 832 (1993), *appeal denied,* 540 *Pa.* 635, 658 A.2d 798 (1995). As in New Jersey, an arbitrator may not require the performance of an act that is prohibited by law. *Ibid.* Contrary to defendant's view, as in New Jersey, "matters of inherent managerial policy" are not subject to arbitration under Act 111. *Id.* at 833-34 (concluding that the strength of the police force was not arbitrable).

Defendant cites *Township of Upper Saucon v. Pennsylvania Labor Relations Bd.*, 152 *Pa.Cmwlth.* 530, 620 A.2d 71, 74 (1993), in which the court rejected the argument that Pennsylvania law requires the balancing of an employer's "managerial purposes and objectives in order to determine whether the subject at issue is rationally related to employees' duties." *Amicus* concurs that Pennsylvania "would allow a decision that does not take into account the public interest." However, the court in *Upper Saucon, supra,* holding that the implementation of a new steady shift schedule for police officers was a mandatory subject of bargaining under Act 111, explained that management objectives are properly considered, and " 'a managerial policy concern must *substantially outweigh* any impact an issue will have on the employe[e]s for that issue to be deemed a managerial prerogative.' " *Ibid.* (quoting the proposed decision and order of the hearing examiner). *See also Frackville Borough Police Dep't v. Pennsylvania Labor Relations Bd.*, 701 A.2d 632, 634-35 (Pa.Commw.Ct.1997), *appeal denied,* 551 *Pa.* 706, 712 A.2d 287 (1998) (choice of a pension plan manager is within managerial policy exception to collective bargaining).

Furthermore, arbitrators appointed in New Jersey and Pennsylvania must consider similar factors. New Jersey lists eight factors which the arbitrator or panel of arbitrators must consider: (a) the interests and welfare of the public; (b) a comparison of the wages and other conditions of employment of the employees in issue to those of other public and private employees performing the same or similar work; (c) the employees' current overall compensation; (d) the parties' stipulations; (e) the employer's lawful authority; (f) the financial impact on the governing unit, its residents and taxpayers; (g) the cost of living; and (h) the continuity and stability of employment. *N.J.S.A.* 34:13A-16g.

Pennsylvania's Act 111 does not require the arbitrators to consider any specific criteria. However, as plaintiffs point out, other Pennsylvania statutes, The Municipalities Financial Recovery Act (*Pa. Stat. Ann.* tit 53, §§ 11701.101 to .501 (West 1999)) and the Intergovernmental Cooperation Authority Act for Cities of the First Class (*Pa. Stat. Ann.* tit. 53, §§ 12720.101

to .709 (West 1999)), require police and fire public interest arbitrators to consider the financial impact on distressed municipalities. Furthermore, the factors enumerated in the New Jersey legislation are simply a codification of the factors any competent public interest arbitrator would apply.

Although we discern some differences in each state's legislation governing public employer-employee labor disputes, we conclude that these differences do not negate the basic public policy of each state that their public employees are entitled to engage in collective negotiations with their employer. The discrepancies are not so significant to render the two statutory schemes substantially dissimilar. Thus, the New Jersey statutes and the Pennsylvania statutes are complementary and parallel.

We are also not concerned that by ordering mediation and public interest arbitration, if necessary, the trial court is venturing into an area usually reserved to a specialized agency. This concern arises because PERC does not have jurisdiction of the DRPA. *See PERC, supra,* 112 *N.J.Super.* at 162, 270 A.2d 704. A similar argument was raised and rejected in *Local 68.* There, Justice Pollock stated:

> Nor do we share the dissent's lack of confidence in the ability of the Chancery Division to interpret labor law. . . . Historically, courts have exercised equitable power to resolve labor disputes. *See e.g., Local No. 11 of Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers v. McKee,* 114 *N.J. Eq.* 555, 169 A. 351 (Ch. Ct.1933) (appointing receiver to manage union's business until members could elect new officers); *Fryns v. Fair Lawn Fur Dressing Co.,* 114 *N.J. Eq.* 462, 168 A. 862 (Ch. Ct.1933) (holding Chancery Court had jurisdiction and that employer could not force employees to join a particular union). . . . At some time, the New Jersey and Delaware Legislatures may adopt legislation designating an agency to resolve "the myriad of issues that will arise during the course of collective negotiations." [Douglas L. Leslie, ed., *The Railway Labor Act* 7 (BNA Books 1995)]. Until such time as the legislatures make such a

designation, however, the absence of such legislation does not deprive the [court] of jurisdiction.

[*Local 68, supra,* 147 *N.J.* at 448, 688 A.2d 569.]

This reasoning is no less applicable in this case.

Finally, we reject defendant's and *amicus'* argument that the order to require mediation and possibly public interest arbitration usurps the veto power bestowed on the Governor of New Jersey. *N.J.S.A.* 32:3-4. However, the Compact specifically recognizes that the legislatures of both states may delegate or impose additional powers on the DRPA. *N.J.S.A.* 32:3-5. Furthermore, the Governor's veto power is a check on the actions of the DRPA rather than an affirmative grant to thwart public policy.

Accordingly, we affirm the order requiring the DRPA to mediate and, if necessary, submit to public interest arbitration its contract dispute with Lodge 30.

Affirmed.

APPENDIX B

FRATERNAL ORDER OF POLICE, PENN-JERSEY LODGE 30, and JOSEPH VENA,	SUPERIOR COURT OF NEW JERSEY CAMDEN COUNTY LAW DIVISION
Plaintiffs,	DOCKET NO. L-7547-96 CIVIL ACTION
v.	**JUDGMENT ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER OR AMEND JUDGMENT, AND STAY ALL PROCEEDINGS**
DELAWARE RIVER PORT AUTHORITY, *Defendant.*	BEFORE: THE HONORABLE M. ALLAN VOGELSON, P.J.S.C.

This matter having been opened to the Court by Blank Rome Comisky & McCauley LLP, Counsel to Defendant Delaware River Port Authority for an Order Granting Its Motion For Reconsideration And/Or To Alter Or Amend Judgment, And Stay All Proceedings, and opposed by Plaintiffs' Counsel Spear, Wilderman, Borish, Endy, Spear and Runckel, and the Court having considered the papers and argument of Counsel:

It is this 17th day of February, 1998, for the reasons set forth in my January 23, 1998 bench opinion, HEREBY ORDERED THAT:

(1) Defendant's Motion For Reconsideration And/Or To Alter Or Amend Judgment, and Stay All Proceedings is denied; thus;

(2) The Court's Order of November 21, 1997 continues in full force and effect; and

(3) The Court's Order of December 19, 1997 remains in full force and effect (as subsequently modified by Court postponing the action to be taken by the Commissioners set out in Paragraph 1 until the February or the next regularly scheduled meeting of the DRPA Commissioners).

/s/ M. Allan Vogelson

M. Allan Vogelson, P.J.S.C.

APPENDIX C

FOP, LODGE 30 and VENA,	SUPERIOR COURT OF NEW JERSEY CAMDEN COUNTY
Plaintiffs,	LAW DIVISION
v.	DOCKET NO. L-7547-96
DELAWARE RIVER PORT AUTHORITY,	CIVIL ACTION
Defendant.	**ORDER**

THIS MATTER having been opened to the Court by the Parties by telephone conferences held before the Honorable M. Allan Vogelson, P.J.S.C., on the 10th and 12th days of December, 1997, and Judge Vogelson having heard and considered the arguments of both parties through their attorneys, and both parties having advised the Court that the following reflects Judge Vogelson's Rulings; and the Court having had the opportunity to confer with Judge Vogelson's Chambers:

In Judge Vogelson's absence, IT IS on this 19th day of December, 1997, ORDERED that:

1. At their next regularly scheduled meeting, the Commissioners of the Defendant Delaware River Port Authority ("DRPA") shall appropriate funds to equally share the American Arbitration Association ("AAA") mediator's fees with the Plaintiffs for the first three (3) mediation sessions, as set out in the Grievance Mediation Rules of the AAA, in order to carry out the Court's Order of November 21, 1997, directing the parties to proceed to Mediation before the AAA;

2. The DRPA Motion to Stay all proceedings pending the Court's consideration of the DRPA's Motion for Reconsideration, etc., filed on December 5th, 1997, is denied;

3. Count II of Plaintiff's Amended Complaint is withdrawn with Prejudice;

4. The DRPA request to file an additional report, proffered as an "expert report", in connection with its Motion For Reconsideration, etc. is denied; and

5. The Return Date for the DRPA's Motion for Reconsideration is adjourned until January 23, 1997.

/s/ John A. Fratto, J.S.C.

JOHN A. FRATTO, J.S.C.

APPENDIX D

FRATERNAL ORDER OF POLICE, PENN-JERSEY LODGE 30, and JOSEPH VENA,	: SUPERIOR COURT OF : NEW JERSEY : CAMDEN COUNTY : LAW DIVISION
Plaintiffs,	: DOCKET NO. L-7547-96 : CIVIL ACTION
v.	: **JUDGMENT ORDER : GRANTING PLAINTIFFS' : MOTION FOR SUMMARY : JUDGMENT ON COUNT I**
DELAWARE RIVER PORT AUTHORITY,	: **OF THE AMENDED : COMPLAINT**
Defendant.	: BEFORE: : THE HONORABLE : M. ALLAN VOGELSON, : P.J.S.C.

This matter having been opened to the Court by Spear, Wilderman, Borish, Endy, Spear and Runckel, attorneys for Plaintiffs, Fraternal Order of Police, Penn-Jersey Lodge 30 and Joseph Vena, for an Order Granting Plaintiffs' Motion for Summary Judgment on Count I of the Amended Complaint, and by Blank Rome Comisky & McCauley, attorneys for Defendant, the Delaware River Port Authority, for an Order Granting Defendant's Cross-Motion for Summary Judgment on Plaintiffs' Amended Complaint, or in the Alternative to Strike Plaintiffs' Proffered Expert Testimony or to Continue the Motion in order that the DRPA may submit additional affidavits, take discovery of Plaintiffs' expert or submit its own expert testimony, and the Court, having considered the papers and the argument of counsel.

It is this 21st day of November, 1997, for the reasons set forth in my November 3, 1997 bench opinion, **HEREBY ORDERED THAT:**

(1) Plaintiffs' Motion for Summary Judgment on Count I of the Amended Complaint, filed June 13, 1997, is **GRANTED** as follows: (a) The Parties shall select a mediator from a list supplied by the American Arbitration Association to develop a procedure and mechanism to resume good faith negotiations and arrive at an agreement over the terms and conditions of employment for DRPA police officers; (b) On December 3, 1997, at 1:30 p.m. the Parties shall appear before the Court to report on the progress of the above mediation; (c) If the Parties remain at impasse the Court can and will order binding interest arbitration.

(2) Defendant's Cross-Motion for Summary Judgment on Plaintiffs' Amended Complaint, or in the Alternative to Strike Plaintiffs' Proffered Expert Testimony or to Continue the Motion in order that the DRPA may submit additional affidavits, take discovery of Plaintiffs' expert or submit its own expert testimony, filed on July 15, 1997, is **DENIED**;

(3) Defendant's Motion for a Stay of this Order, made orally to the Court on November 3, 1997, is **DENIED;**

(4) The Court certifies this Judgment Order as Final for purposes of Appeal pursuant to Rule 4:42-2.

/s/ M. Allan Vogelson

M. Allan Vogelson, P.J.S.C.

APPENDIX E

FRATERNAL ORDER OF POLICE, *et al.*,	: SUPREME COURT OF NEW JERSEY
	: C-413 September Term 1999
Plaintiffs-Respondents,	: 48,489
	: CORRECTED ORDER
v.	: ON PETITION FOR CERTIFICATION
DELAWARE RIVER PORT AUTHORITY,	: FILED DEC 08 1999 Stephen Townsend
Defendant-Petitioner.	: CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3344-97 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal filed in the within matter is dismissed pursuant to Rule 2:12-9

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 7th day of December, 1999.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT OF NEW JERSEY

APPENDIX F

PUBLIC RESOLUTION S.J. RES. 41
CHAPTER 258 — June 14, 1932
47 STAT. 308*

JOINT RESOLUTION

Granting consent of Congress to a compact or agreement between the commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission and specifying the powers and duties thereof.

Whereas, pursuant to act numbered 200 of the Commonwealth of Pennsylvania, approved June 12, 1931, and chapter 391 of the Laws of New Jersey, approved June 30, 1931, the Commonwealth of Pennsylvania and the State of New Jersey have entered into a certain compact or agreement, which said compact or agreement has been duly executed and delivered by the governor of the Commonwealth of Pennsylvania on behalf of said Commonwealth, and by the New Jersey Interstate Bridge Commission on behalf of said State; and

Whereas the aforesaid agreement or compact is in substantially the following form, that is to say:

"Whereas the Commonwealth of Pennsylvania and the State of New Jersey are the owners of a certain bridge across the Delaware River between the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey; and

"Whereas the Pennsylvania Commission, existing by virtue of act numbered 338 of the Commonwealth of Pennsylvania, approved July 9, 1919 (Pamphlet Laws, 814), and acts amendatory thereof and supplementary thereto, and the New Jersey Interstate Bridge Commission, existing by virtue of chapter 271 of the Laws of New Jersey of 1929, and acts amendatory thereof and supplementary thereto, are acting

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* Articles I through XII of the Compact are also found at N.J.S.A. 32:3-2-13. Article XIII of the Compact is also found at N.J.S.A. 32:3-13.23.

Articles I through XIII of the Compact are also found at 36 P.S.A. § 3503.

jointly under the name of the Delaware River Bridge Joint Commission in connection with the operation and maintenance of said bridge; and

"Whereas the interests of the people of the two States will be best served by consolidating the two commissions in corporate form, and granting additional powers and authority thereto with reference to the said bridge, and to other and further means of communication between the two States in the vicinity of Philadelphia and Camden; and

"Whereas additional transportation facilities between the two States in the vicinity of Philadelphia and that part of New Jersey opposite thereto will be required in the future for the accommodation of the public and the development of both States; and

"Whereas both States have mutual interests in the development of the Delaware River from Philadelphia and Camden to the sea, and particularly in developing the facilities and promoting the more extensive use of the ports of Philadelphia and Camden by coastwise, intercoastal, and foreign vessels; and

"Whereas it is highly desirable that there be a single agency of both States empowered to further the aforesaid interests of both States: Now, therefore

"The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree each with the other, as follows:

"ARTICLE I

"There is hereby created a body corporate and politic to be known as the Delaware River Joint Commission (hereinafter in this agreement called the 'Commission'), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

"(a) The operation and maintenance of the bridge owned jointly by the two States and the city of Philadelphia, as its interests may appear, across the Delaware River between the

city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

"(b) The effectuation, establishment, construction, operation, and maintenance of railroad or other facilities for the transportation of passengers across the said bridge, including extensions thereof to the vicinity of Race Street and Eighth Street in the city of Philadelphia, and to the vicinity of Carman Street and Haddon Avenue in the city of Camden.

"(c) The investigation of the necessity for additional means of communication between the Commonwealth of Pennsylvania in the vicinity of Philadelphia and the State of New Jersey opposite thereto, and between the ports of Philadelphia and Camden and the sea, and making of such studies, surveys, and estimates as may be necessary to determine the feasibility and cost of any such additional means of communication, whether the same be by bridge, tunnel, canal, or otherwise.

"(d) Cooperation with all other bodies interested or concerned with or affected by the promotion, development, or use of the Delaware River.

"(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

"(f) The promotion of the Delaware River as a highway of commerce between Philadelphia and Camden and the sea.

"(g) The promotion of increased commerce on the Delaware River, both freight and passenger, and, for this purpose, the publication of such literature and the adoption of such means as may be deemed appropriate.

"(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse, and other facilities necessary for the promotion of commerce on the Delaware River.

"(i) Institution, through the attorneys general of Pennsylvania and New Jersey, of or intervention in any litigation involving rates, preferences, rebates, or other matters vital to the interests of the ports of the Delaware River.

"(j) Any other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey, in so far as concerns the promotion and development of the ports of Philadelphia and of Camden, and the use by commercial vessels of their facilities.

"ARTICLE II

"The commission shall consist of sixteen commissioners, eight resident voters of the Commonwealth of Pennsylvania, and eight resident voters of the State of New Jersey, who shall serve without compensation.

"The first eight commissioners for the Commonwealth of Pennsylvania shall be the governor of the Commonwealth, the auditor general, the State treasurer, the mayor of the city of Philadelphia, and the four additional persons now serving as members of the Pennsylvania Commission, existing by virtue of act numbered 338 of the Commonwealth of Pennsylvania, approved July 9, 1919 (Pamphlet Laws, 814), and acts amendatory thereof and supplementary thereto.

"The first eight commissioners for the State of New Jersey shall be the eight individuals now holding office, as members of the New Jersey Interstate Bridge Commission, existing by virtue of chapter 271 of the laws of said State of 1929, approved May 6, 1929, and acts amendatory thereof and supplementary thereto, which said eight individuals are hereby appointed by said State as such commissioners, who shall serve for their unexpired terms as members of the New Jersey Interstate Bridge Commission. Succeeding commissioners shall be elected by the legislature to serve for terms of five years.

"For the Commonwealth of Pennsylvania, the governor, the auditor general, the State treasurer, and the executive head of the city of Philadelphia, in office at the time, shall always be members of the commission, and, in addition thereto, there shall be four members appointed by the governor, who shall be known as appointive members. Whenever a vacancy occurs in the appointive membership of the commission, the governor shall appoint a member to serve for a term of five years from the date of his appointment.

"For the State of New Jersey, whenever a vacancy in the office of commissioner shall occur, such vacancy shall be filled for the unexpired term by the legislature. If the legislature shall not be in session when the vacancy occurs, such vacancy shall be filled by the governor, and such appointee shall hold office until the legislature convenes.

"All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected unless and until their respective successors are appointed and qualified, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

"ARTICLE III

"The commissioners shall have charge of the commission's property and affairs, and shall, for the purpose of doing business, constitute a board, but no action of the commissioners shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

"ARTICLE IV

"For the effectuation of its authorized purposes, the commission is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To sue and be sued.

"(c) To adopt and use an official seal.

"(d) To elect a chairman, vice chairman, secretary, and treasurer, and to adopt suitable by-laws for the management of its affairs. The secretary and treasurer need not be members of the commission.

"(e) To appoint such other officers, and such agents and employees as it may require for the performance of its duties, and fix and determine their qualifications, duties, and compensation.

"(f) To enter into contracts.

"(g) To acquire, own, hire, use, operate, and dispose of personal property.

"(h) To acquire, own, use, lease, operate, and dispose of real property and interests in real property, and to make improvements thereon.

"(i) To grant the use of, by franchise, lease, or otherwise, and to make charges for the use of, any property or facility owned or controlled by it.

"(j) To borrow money upon its bonds or other obligations either with or without security.

"(k) To exercise the right of eminent domain.

"(l) To determine the exact location, system and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(m) In addition to the foregoing, to exercise the powers, duties, authority, and jurisdiction heretofore conferred and imposed upon the aforesaid Pennsylvania Commission and upon the aforesaid New Jersey Interstate Bridge Commission, severally, or upon both of said commissions jointly, by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said two States; and

"(n) To exercise all other powers, not inconsistent with the constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise, in connection with its property and affairs and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"ARTICLE V

"If for any of its authorized purposes (including temporary construction purposes), the commission shall find it necesary or convenient to acquire any real property in the Commonwealth of Pennsylvania or the State of New Jersey, whether for immediate or future use, the commission may find and determine that such property, whether a fee simple absolute or a lesser interest, is required for public use, and, upon

such determination, the said property shall be deemed to be required for a public use until otherwise determined by the commission, and, with the exceptions hereinafter specifically noted, the said determination shall not be affected by the fact that such property has theretofore been taken for or is then devoted to a public use, but the public use in the hands or under the control of the commission shall be deemed superior to the public use in the hands or under the control of any other person, association, or corporation.

"If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the Commonwealth of Pennsylvania for any reason whatsoever, then the commission may acquire such real property in the manner provided by act Numbered 338 of the Commonwealth of Pennsylvania, approved July 9, 1919, and acts amendatory thereof and supplementary thereto, for the acquisition of real property by the aforesaid Pennsylvania Commission.

"If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the State of New Jersey for any reason whatsoever, then the commission may acquire and is hereby authorized to acquire such property, whether a fee simple absolute or a lesser interest, by condemnation or the exercise of the right of eminent domain, either under and pursuant to the provisions of the act of the State of New Jersey, entitled 'An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use' (revision of 1900, approved March 20, 1900), and acts amendatory thereof and supplementary thereto, or under and pursuant to the provisions of an act entitled 'An Act concerning and regulating acquisition and taking of lands by the State of New Jersey, or any agency thereof; providing a procedure therefor, and the manner of making compensation for lands so taken' approved April 21, 1920, and the various acts amendatory thereof and supplementary thereto.

"The power of the commission to acquire real property by condemnation or the exercise of the power of eminent domain in the Commonwealth of Pennsylvania and the State

of New Jersey shall be a continuing power and no exercise thereof shall be deemed to exhaust it.

"The commission and its duly authorized agents and employees may enter upon any land in the Commonwealth of Pennsylvania or the State of New Jersey, for the purpose of making such surveys, maps, or other examinations therefor, as it may deem necessary or convenient for its authorized purposes.

"However, anything to the contrary contained in this compact notwithstanding, no property now or hereafter vested in or held by any county, city, borough, village, township or other municipality or port district shall be taken by the commission without the consent of such municipality or port district unless expressly authorized so to do by the Commonwealth or State in which such municipality or port district is located. All counties, cities, boroughs, villages, townships, and other municipalities, and all public agencies and commissions of the Commonwealth of Pennsylvania, and the State of New Jersey, notwithstanding any contrary provision of law, are hereby authorized and empowered to grant and convey to the commission upon its request, but not otherwise, upon reasonable terms and conditions, any real property which may be necessary or convenient to the effectuation of its authorized purposes, including real property already devoted to public use.

"The Commonwealth of Pennsylvania and the State of New Jersey hereby consent to the use and occupation by the commission of any real property of the said two States, or of either of them, which may be or become necessary or convenient to the effectuation of the authorized purposes of the commission, including lands lying under water and lands already devoted to public use.

"The term 'real property' as used in this compact, includes lands, structures, franchises, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every

estate, interest, or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages, or otherwise, and also claims for damage to real estate.

"ARTICLE VI

"The control, operation, tolls, and other revenues of the aforesaid existing bridge across the Delaware River between the city of Philadelphia and city of Camden, and of all real and personal property's appurtenant thereto or used in connection therewith, shall vest in the commission on the 1st day of July, 1931, and the terms of the members of the aforesaid Pennsylvania Commission and the aforesaid New Jersey Interstate Bridge Commission shall cease and terminate on that date.

"On or before the 30th day of June, 1932, or as soon thereafter as practicable, the commission shall pay to the Commonwealth of Pennsylvania, the State of New Jersey, and the city of Philadelphia the following sums out of moneys, raised by said commission on its bonds or other obligations:

"(a) An amount equal to the moneys contributed by the Commonwealth of Pennsylvania toward the cost of acquiring property for and constructing said bridge and the approaches thereto, and expenditures incident thereto, with interest at the rate of 4 per centum per annum, such interest to be computed from the dates on which installments of such funds were paid to the Delaware River Bridge Joint Commission by the said Commonwealth of Pennsylvania, as shown by the records of its State treasurer, less, however, the amount returned to the Commonwealth of Pennsylvania from the net revenues of the bridge between July 1, 1926, and June 30, 1931, and less interest, at the rate of 4 per centum per annum, upon such amount computed from the dates of repayment to the Commonwealth of Pennsylvania.

"(b) An amount equal to the moneys contributed by the State of New Jersey toward the cost of acquiring property for and contructing said bridge and the approaches thereto, and expenditures incident thereto, with interest theretofore actually paid by the State of New Jersey or accrued upon the bonds issued by said State to borrow money to pay its share of the cost of acquiring property for, and construction of, said

bridge and the approaches thereto, and all expenditures incident thereto, less, however, the amount returned to the State of New Jersey from the net revenues of the bridge between July 1, 1926, and June 30, 1931, and less interest, at the rate of 4¼ per centum per annum, upon such amount computed from the dates of repayment to the State of New Jersey.

"(c) An amount equal to the moneys contributed by the city of Philadelphia toward the cost of acquiring property for and constructing said bridge and the approaches thereto, and expenditures incident thereto, with interest theretofore actually paid by the city of Philadelphia or accrued upon the bonds issued by said city to borrow money to pay its share of the cost of acquiring property for and construction of said bridge and approaches thereto, and all expenditures incident thereto, less, however, the amount returned to the city of Philadelphia from the net revenues of the bridge between July 1, 1926, and June 30, 1931, and less interest, at the rate of 4¼ per centum per annum, upon such amount computed from the dates of repayment to the city of Philadelphia.

"(d) As soon as is practicable subsequently to July 1, 1931, the commission shall determine with the Commonwealth of Pennsylvania, the State of New Jersey, and the city of Philadelphia the net amounts due to each, respectively, as of the 1st day of July, 1931, and from that date until the date of payment interest shall be paid by the commission to the Commonwealth of Pennsylvania at the rate of 4 per centum per annum and to the State of New Jersey and to the city of Philadelphia at the rate of 4¼ per centum per annum.

"(e) The amount payable by the commission to the Commonwealth of Pennsylvania, as aforesaid, shall be paid to the State treasurer of the Commonwealth of Pennsylvania upon a voucher signed and audited by said State treasurer, who is hereby authorized to consummate the said transaction. The amount payable to the State of New Jersey shall be paid to the comptroller of said State upon a voucher signed and audited by said comptroller, who is hereby authorized to consummate the said transaction. The amount payable to the city of Philadelphia shall be paid to the treasurer of the said city upon a voucher signed and audited by said treasurer, who is hereby

authorized to consummate the said transaction. Upon the receipt of the proper payment each of said officials shall certify to the Delaware River Joint Commission that all moneys payable by the Delaware River Joint Commission, to the Commonwealth, State, or city, as the case may be, have been duly paid.

"(f) Nothing herein contained shall be construed to affect, diminish, or impair the rights and obligations created by, or to repeal any of, the provision of chapter 352 of the Laws of New Jersey of 1920, and chapter 262 of the Laws of New Jersey of 1924, and chapter 336 of the Laws of New Jersey of 1926, and chapter 33 of the Laws of New Jersey of 1927, and chapter 64 of the Laws of New Jersey of 1928.

"(g) Of the money paid to the State of New Jersey under the provisions of this agreement, there shall be paid to the sinking fund commission, created by the provisions of the foregoing statutes (chapter 352 of the Laws of New Jersey of 1920 and chapter 262 of the Laws of New Jersey of 1924), such sum or sums as said sinking fund commission may deem necessary to meet the then existing indebtedness and obligations set forth in said statutes, together with such interest and other charges as may be due or may grow due. The amount thus to be paid to the sinking fund commission shall be arrived at and determined by said sinking fund commission within ninety days after payment is made to the State of New Jersey pursuant to the provisions of this agreement. The moneys to be paid to and received by said sinking fund commission are hereby appropriated by the State of New Jersey and are to be used for sinking-fund purposes according to law.

"(h) No failure on the part of the commission to make the aforesaid payments to the Commonwealth of Pennsylvania, to the State of New Jersey, or the city of Philadelphia, shall affect, diminish, or impair the rights of the holders of any bonds or other securities or obligations of said commission, as security for which the tolls and other revenues of the said bridge may be pledged.

"ARTICLE VII

"Notwithstanding any provision of this agreement, the commission shall have no power to pledge the credit of the Commonwealth of Pennsylvania, or the credit of the State of New Jersey, or the credit of any country, city, borough, village, township, or other municipality of said Commonwealth or of said State, or to create any debt of said Commonwealth, or of said State or of such municipality.

"ARTICLE VIII

"The commission is hereby authorized to make and enforce such rules and regulations, and to establish, levy and collect (or to authorize by contract, franchise, lease or otherwise, the establishment, levying, and collection of) such tolls, rents, rates, and other charges in connection with the aforesaid existing bridge across the Delaware River, and any other properties which it may hereafter construct, erect, acquire, own, operate or control, as it may deem necessary, proper, desirable and reasonable, which said tolls, rents, rates, and other charges shall be at least sufficient to meet the expenses thereof, including interest and sinking-fund charges; and the commission is hereby authorized and empowered to pledge such tolls, rates, rents, and other revenues, or any part thereof, either presently received or to be received in the future, or both, as security of the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes and as security for the satisfaction of any other obligation assumed by it in connection with such loans or advances.

"ARTICLE IX

"The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other securities or obligations of the commission for which there may or shall be pledged the tolls, rents, rates, or other revenues, or any part thereof, of any property of facility owned, operated, or controlled by the commission (including the said bridge across the Delaware River and the facilities for the transportation of passengers

across the said bridge), that (so long as any of said bonds or other securities or obligations remain outstanding and unpaid, and unless and until adequate provision is made by law for the protection of those advancing money upon such obligations) the Commonwealth and the said State will not diminish or impair the power of the commission to own, operate, or control said properties and facilities, or to establish, levy and collect tolls, rents, rates, and other charges in connection with such properties or facilities.

"The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other securities or obligations of the commission for which the tolls, rents, rates, or other revenues, or any part thereof, of the aforesaid existing bridge across the Delaware River shall have been pledged that the said Commonwealth and the said State will not authorize or permit the authorization of the construction, operation, or maintenance of any additional vehicular bridge or tunnel or any additional bridge or tunnel having railroad or other facilities for the transportation of passengers between the said Commonwealth and the said State over or under the Delaware River by any other person or body than the commission, within a distance of ten miles in either direction from the said bridge measured along the boundary line between the said Commonwealth and the said State.

"ARTICLE X

"The bonds or other securities or obligations which may be issued by the commission for any of its authorized purposes, and as security for which there may be pledged the tolls, rents, rates, and other revenues, or any part thereof, of any properties or facilities owned, operated, or controlled by the commission (including the aforesaid existing bridge across the Delaware River and the aforesaid facilities for the transportation of passengers across the said bridge), are hereby made securities in which all State and municipal officers and bodies of the Commonwealth of Pennsylvania and State of New Jersey, all banks, bankers, trust companies, savings banks, savings and loan associations, investment companies,

and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever, who are now or hereafter may be authorized to invest in bonds or other obligations of the Commonwealth of Pennsylvania or of the State of New Jersey, may properly and legally invest any funds, including capital belonging to them or within their control; and said bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or agency of the Commonwealth of Pennsylvania or the State of New Jersey for any purpose for which the deposit of bonds or other obligations, either of the Commonwealth or of the State, is now or may hereafter be authorized.

"ARTICLE XI

"The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property, acquired or used by it for such purposes, and the bonds or other securities or obligations issued by the commission, their transfer, and the income thereof (including any profits made on the sale thereof) shall, at all times, be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

"ARTICLE XII

"The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports, from time to time, to the governors and legislatures as it may deem desirable.

"Whenever the commission, after investigation and study, shall have concluded plans, with estimates of cost, and means of financing any new project, other than those described in article 1, subdivision (b) hereof, for transportation across or under the Delaware River within the area hereinbefore described, any new project for the improvement of the Delaware River's port facilities, or any other project for the mutual advantage of Pennsylvania and New Jersey and coming within the purposes for which it is created, the commission shall make to the legislatures of each State a detailed report, dealing only with the contemplated project, and shall request of said legislatures authority to proceed with the project described; and it shall not be within the power of the commission to construct, erect, or otherwise acquire any facility or project, except those described in article 1, subdivision (b) hereof, unless and until the legislatures of both States shall have authorized the commission to proceed with the project outlined in its special report thereon.

"In witness whereof, this 1st day of July, anno Domini, 1931, Gifford Pinchot has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached hereto.

"(SEAL) GIFFORD PINCHOT,

"Governor Commonwealth of Pennsylvania.

"And on this 1st day of July, anno Domini, 1931, the New Jersey Interstate Bridge Commission by its members, pursuant to law, has signed this agreement for and on behalf of the State of New Jersey.

"JOHN B. KATES.
"ARTHUR C. KING.
"THOMAS J. S. BARLOW.
"BARTON F. SHARP.
"ALFRED COOPER.
"FRANK L. SUPLEE.
"LUCIUS E. HIRES.
"I. NORWOOD GRISCOM.

"Witnesses:
"DAVID J. SMYTH.
"JOSEPH K. COSTELLO.
"T. HARRY ROWLAND.

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the aforesaid compact or agreement, and to each and every term and provision thereof: *Provided,* That nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof: *And provided further,* That the right to alter, amend, or repeal this resolution or any part thereof is hereby expressly reserved.

Approved, June 14, 1932.

PUBLIC LAW 573
CHAPTER 922 – July 17, 1952
66 STAT. 747

AN ACT

Granting the consent of Congress to a supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the supplemental compact or agreement set forth below, and to each and every term and provision thereof: *Provided,* That nothing therein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of said supplemental compact or agreement or otherwise affected by the terms thereof: *Provided further,* That the consent of Congress hereby given shall not be construed to affect in any manner whatsoever the application of the internal-revenue laws of the United States to the bonds or other securities or obligations issued by the commission, their transfer and the income therefrom (including any profits made on the sale thereof):

SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

AMENDING AND SUPPLEMENTING THE AGREEMENT ENTITLED "AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY CREATING THE DELAWARE RIVER JOINT COMMISSION AS A

BODY CORPORATE AND POLITIC AND DEFINING ITS POWERS AND DUTIES," CHANGING THE NAME OF THE DELAWARE RIVER JOINT COMMISSION TO THE DELAWARE RIVER PORT AUTHORITY, CHANGING THE METHOD OF APPOINTMENT OF THE COMMISSIONERS, EXTENDING THE JURISDICTION, POWERS AND DUTIES OF SAID THE DELAWARE RIVER PORT AUTHORITY, AND DEFINING SUCH ADDITIONAL JURISDICTION, POWERS AND DUTIES

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree each with the other, as follows:

(1) Article I of the "Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its powers and duties," which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on the first day of July, one thousand nine hundred and thirty-one, and on behalf of the State of New Jersey by the New Jersey Interstate Bridge Commission by its members on the first day of July, one thousand nine hundred and thirty-one, and which was consented to by the Congress of the United States by Public Resolution Number Twenty-six, being chapter two hundred fifty-eight of the Public Laws, Seventy-second Congress, approved the fourteenth day of June, one thousand nine hundred and thirty-two, is amended to read as follows:

ARTICLE I

The body corporate and politic, heretofore created and known as the Delaware River Joint Commission hereby is continued under the name of the Delaware River Port Authority (hereinafter in this agreement called the "commission"), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

(a) The operation and maintenance of the bridge, owned jointly by the two States across the Delaware river between

the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

(b) The effectuation, establishment, construction, operation and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities within the city of Camden and the city of Philadelphia necessary for efficient operation in the Port District.

(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation or in any other manner.

(d) Co-operation with all other bodies interested or concerned with, or affected by the promotion, development or use of the Delaware river and the Port District.

(e) The procurement from the government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware river, between the city of Philadelphia and the State of New Jersey, including approaches and the making of additions and improvements thereto.

(g) The promotion as a highway of commerce of the Delaware river, and the promotion of increased passenger and freight commerce on the Delaware river and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware river.

(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates or other matters vital to the interest of the Port District; provided, that notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express, mail, and baggage between points in New Jersey communities within the Port District and within a thirty-five (35) mile radius of the city of Camden, New Jersey, and points within the city of Philadelphia, Pennsylvania, and intermediate points. Such system may be established by either utilizing existing rapid transit systems, railroad facilities, highways and bridges within the territory involved or by the construction or provision of new facilities where deemed necessary.

(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

(2) Article II of said agreement is amended to read as follows:

ARTICLE II

The commission shall consist of sixteen commissioners, eight resident voters of the Commonwealth of Pennsylvania and eight resident voters of the State of New Jersey, who shall serve without compensation.

The present members of the commission, including ex-officio members, shall continue to serve, respectively, as commissioners until the expiration of their terms or the terms of office by virtue of the holding of which they are members of the commission and until succeeding commissioners shall be

appointed and qualify, except that the terms of the present members of the commission for the Commonwealth of Pennsylvania shall expire as of the date of the coming into force of the supplemental compact or agreement authorized by the Act of the 1951 General Assembly of said Commonwealth providing for amendment of this article.

The commissioners for the State of New Jersey shall be appointed by the Governor of New Jersey with the advice and consent of the Senate of New Jersey, for terms of five years, and in case of a vacancy occurring in the office of commissioner during a recess of the Legislature, it may be filled by the Governor by an ad interim appointment which shall expire at the end of the next regular session of the Senate unless a successor shall be sooner appointed and qualify and, after the end of the session, no ad interim appointment to the same vacancy shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it, and no person nominated for any such vacancy shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall ex-officio be commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at any meeting of the commission which he does not attend personally.

All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

(3) Article IV of said agreement is amended to read as follows:

ARTICLE IV

For the effectuation of its authorized purposes the commission is hereby granted the following powers:

(a) To have perpetual succession.

(b) To sue and be sued.

(c) To adopt and use an official seal.

(d) To elect a chairman, vice-chairman, secretary and treasurer, and to adopt suitable bylaws for the management of its affairs. The secretary and treasurer need not be members of the commission.

(e) To appoint, hire, or employ counsel and such other officers and such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties, and compensation.

(f) To enter into contracts.

(g) To acquire, own, hire, use, operate and dispose of personal property.

(h) To acquire, own, use, lease, operate, mortgage and dispose of real property and interests in real property, and to make improvements thereon.

(i) To grant by franchise, lease or otherwise, the use of any property or facility owned or controlled by the commission and to make charges therefor.

(j) To borrow money upon its bonds or other obligations, either with or without security, and to make, enter into and perform any and all such covenants and agreements with the holders of such bonds or other obligations as the commission may determine to be necessary or desirable for the security and payment thereof, including without limitation of the foregoing, covenants and agreements as to the management and operation of any property or facility owned or controlled by it, the tolls, rents, rates or other charges to be established, levied, made and collected for any use of any such property or facility, or the application, use and disposition of the proceeds of any bonds or other obligations of the commission or the proceeds of any such tolls, rents, rates or other charges or any other revenues or moneys of the commission.

(k) To exercise the right of eminent domain within the Port District.

(l) To determine the exact location, system and character of and all other matters in connection with any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate or control.

(m) In addition to the foregoing, to exercise the powers, duties, authority and jurisdiction heretofore conferred and imposed upon the aforesaid the Delaware River Joint Commission by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said two States;

(n) To exercise all other powers not inconsistent with the constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

(o) To acquire, purchase, construct, lease, operate, maintain and undertake any project, including any terminal facility, transportation facility, or any other facility of commerce and to make charges for the use thereof.

(p) To make expenditures anywhere in the United States and foreign countries, to pay commissions, and hire or contract with experts and consultants, and otherwise to do indirectly anything which the commission may do directly.

The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.

It is the policy and intent of the Legislatures of the Commonwealth of Pennsylvania and the state of New Jersey that the powers granted by this article shall be so exercised that the American system of free competitive private enterprise is given full consideration and is maintained and furthered. In making its reports and recommendations to the Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey on the need for any facility or project which the commis-

sion believes should be undertaken for the promotion and development of the Port District, the commission shall include therein its findings which fully set forth that the facility or facilities operated by private enterprise within the Port District and which it is intended shall be supplanted or added to are not adequate.

(4) Article XI of said agreement is amended to read as follows:

ARTICLE XI

The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, for the increase of their commerce and prosperity and for the improvement of their health and living conditions; and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for such purposes, and the bonds or other securities or obligations issued by the commission, their transfer and the income therefrom (including any profits made on the sale thereof) shall at all times be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

To the end that municipalities may not suffer undue loss of tax revenue by reason of the acquisition and ownership of property therein by the commission, the commission is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any municipality, whereby it will undertake to pay a fair and reasonable sum or sums to compensate the said municipality for any loss of tax revenue in connection with any property acquired by the commission after one thousand nine hundred and fifty other than property acquired for bridge, tunnel or passenger transportation purposes. Any such payment or payments which the commission is hereby authorized and empowered to make may be made on an annual basis, in which case the payment or payments shall not be in excess of the amount of the taxes upon the property when last assessed prior to the time of its acqui-

sition by the commission, or such payment or payments may be made in a lump sum or sums, or over a stated period of years, as shall be agreed upon by and between the commission and such municipality. Every municipality wherein the property shall be acquired by the commission is authorized and empowered to enter into such agreement or agreements with the commission to accept the payment or payments which the commission is herein authorized and empowered to make.

(5) Article XII of said agreement is amended to read as follows:

ARTICLE XII

The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable. Copies thereof shall be available for public information and use.

Whenever the commission after investigation and study shall have concluded plans, with estimates of cost and means of financing, for any new project for a purpose other than any described in Article I, subdivisions (b) or (j) hereof, for transportation across or under the Delaware river within the Port District or improvement of the Delaware river's port facilities, the commission shall make to the Legislatures of each State a detailed report dealing only with the contemplated project and shall request of said Legislatures authority to proceed with the project described and it shall not be within the power of the commission to construct, erect or otherwise acquire any new facility or project, for a purpose other than any described in Article I, subdivisions (b) or (j) hereof, unless and until the Legislatures of both States shall have authorized the commission to proceed with the project outlined in its special report thereon.

In addition, to other powers conferred upon it, and not in limitation thereof, the commission may acquire all right, title and interest in and to the Tacony-Palmyra bridge, across the

Delaware river at Palmyra, New Jersey, together with any approaches and interests in real property necessary thereto. The acquisition of such bridge, approaches and interests by the commission shall be by purchase or by condemnation in accordance with the provisions of the Federal law consenting to or authorizing the construction of such bridge and approaches, or the acquisition of such bridge, approaches or interests by the commission shall be pursuant to and in accordance with the provisions of section 48:5-22 and 48:5-23 of the Revised Statutes of New Jersey, and for all the purposes of said provisions and sections the commission is hereby appointed as the agency of the State of New Jersey and the Commonwealth of Pennsylvania exercising the rights and powers granted or reserved by said Federal law or sections to the State of New Jersey and Commonwealth of Pennsylvania jointly or to the State of New Jersey acting in conjunction with the Commonwealth of Pennsylvania. The commission shall have authority to so acquire such bridge, approaches and interests, whether the same be owned, held, operated or maintained by any private person, firm, partnership, company, association or corporation or by any instrumentality, public body, commission, public agency or political subdivision (including any county or municipality) of, or created by or in, the State of New Jersey or the Commonwealth of Pennsylvania, or by any instrumentality, public body, commission or public agency of, or created by or in, a political subdivision (including any county or municipality) of the State of New Jersey or the Commonwealth of Pennsylvania. None of the provisions of the preceding paragraph shall be applicable with respect to the acquisition by the commission, pursuant to this paragraph, of said Tacony-Palmyra bridge, approaches and interests. The power and authority herein granted to the commission to acquire said Tacony-Palmyra bridge, approaches and interests shall not be exercised unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania have filed with the commission their written consents to such acquisition.

It shall not be within the power of the commission to construct, erect, or otherwise acquire any new facility or

project for a purpose described in Article I, subdivision (j) hereof, unless and until the commission shall have made to the Legislature and Governor of the State of New Jersey and to the Legislature and Governor of the Commonwealth of Pennsylvania a detailed report dealing only with such contemplated facility or project, and the Governor of said State and the Governor of said Commonwealth shall have filed with the commission their written consents to such construction, erection or acquisition.

Notwithstanding any provision of this agreement, nothing herein contained shall be construed to limit or impair any right or power granted or to be granted to the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority, to finance, construct, operate and maintain the Pennsylvania Turnpike System or any turnpike project of the New Jersey Turnpike Authority, respectively, throughout the Port District, including the right and power, acting alone or in conjunction with each other, to provide for the financing, construction, operation and maintenance of one bridge across the Delaware river south of the city of Trenton in the State of New Jersey; provided that such bridge shall not be constructed within a distance of ten miles, measured along the boundary line between the Commonwealth of Pennsylvania and the State of New Jersey, from the existing bridge, operated and maintained by the commission, across the Delaware river between the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, so long as there are any outstanding bonds or other securities or obligations of the commission for which the tolls, rents, or other revenues, or any part thereof, of said existing bridge shall have been pledged. Nothing contained in this agreement shall be construed to authorize the commission to condemn any such bridge.

Anything herein contained to the contrary notwithstanding, no bridge or tunnel shall be constructed, acquired, operated or maintained by the commission across or under the Delaware river north of the boundary line between Bucks county and Philadelphia county in the Commonwealth of

Pennsylvania as extended across the Delaware river to the New Jersey shore of said river, and any new bridge or tunnel authorized by or pursuant to this compact or agreement to be constructed or erected by the commission may be constructed or erected at any location south of said boundary line notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey. Except as may hereinafter be otherwise provided in conformity with Article IX hereof with respect to specific properties designated by action of the Legislatures of both of the signatory States, no property or facility owned or controlled by the commission shall be acquired from it by any exercise of powers of condemnation or eminent domain.

(6) Said agreement is further amended by adding thereto, following the last article thereof, a new article reading as follows:

ARTICLE XIII

As used herein, unless a different meaning clearly appears from the context:

"Port District" shall mean all the territory within the counties of Delaware and Philadelphia in Pennsylvania, and all the territory within the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem in New Jersey.

"Commission" shall mean the Delaware River Port Authority and, when required by the context, the board constituting the governing body thereof in charge of its property and affairs.

"Commissioner" shall mean a number of the governing body of the Delaware River Port Authority.

"Terminal" shall include any marine, motor truck, railroad and air terminal, also any coal, grain and lumber terminal and any union freight and other terminals used or to be used in connection with the transportation of passengers and freight, and equipment, materials and supplies therefor.

"Transportation facility" and "facilities for transportation of passengers" shall include railroads operated by steam, electricity or other power, rapid transit lines, motor trucks, tunnels, bridges, airports, boats, ferries, carfloats, lighters, tugs,

floating elevators, barges, scows, or harbor craft of any kind, and aircraft, and equipment, materials and supplies therefor.

"Terminal facility" shall include wharves, piers, slips, ferries, docks, drydocks, ship repair yards, bulkheads, dock walls, basins, carfloats, float-bridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, bunker coal, oil and fresh water stations, markets, and every kind of terminal, storage or supply facility now in use, or hereafter designed for use to facilitate passenger transportation and for the handling, storage, loading or unloading of freight at terminals, and equipment, materials and supplies therefor.

"Transportation of passengers" and "passenger transportation" shall mean the transportation of passengers by railroad or other facilities.

"Rapid transit system" shall mean a transit system for the transportation of passengers, express, mail and baggage by railroad or other facilities, and equipment, materials and supplies therefor.

"Project" shall mean any improvement, betterment, facility or structure authorized by or pursuant to this compact or agreement to be constructed, erected, acquired, owned or controlled or otherwise undertaken by the commission. "Project" shall not include undertakings or purposes described in Article I, subdivisions (a), (d), (e), (g), (h) and (i).

"Railroad" shall include railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, powerhouses, substations, lines for the transmission of power, carbarns, shops, yards, sidings, turnouts, switches, stations and approaches, thereto, cars and motive equipment.

"Bridge" and "tunnel" shall include such approach highways and interests in real property necessary therefor in the Commonwealth of Pennsylvania or the State of New Jersey as may be determined by the commission to be necessary to facilitate the flow of traffic in the vicinity of a bridge or tunnel or to connect a bridge or tunnel with the highway system or other traffic facilities in said Commonwealth or said State; *provided, however,* that the power and authority herein

granted to the commission to construct new or additional approach highways shall not be exercised unless and until the Department of Highways of the Commonwealth of Pennsylvania shall have filed with the commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the commission its written approval as to approach highways to be located in said State.

"Facility" shall include all works, buildings, structures, property, appliances, and equipment, together with appurtenances necessary and convenient for the proper construction, equipment, maintenance and operation of a facility or facilities or any one or more of them.

"Personal property" shall include choses in action and all other property now commonly, or legally, defined as personal property, or which may hereafter be so defined.

"Lease" shall include rent or hire.

"Municipality" shall include a county, city, borough, village, township, town, public agency, public authority or political subdivision.

Words importing the singular number include the plural number and vice versa.

Wherever legislation or action by the Legislature of either signatory State is herein referred to it shall mean an act of the Legislature duly adopted in accordance with the provisions of the Constitution of such State.

IN WITNESS WHEREOF, this 23rd day of August 1951, ALFRED E. DRISCOLL has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached.

ALFRED E. DRISCOLL
Governor,
State of New Jersey
(Great Seal)

Attest:
LLOYD B. MARSH
Lloyd B. Marsh
Secretary of State

IN WITNESS WHEREOF, this 30th day of August, 1951, JOHN S. FINE has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached thereto.

JOHN S. FINE
Governor,
Commonwealth of
Pennsylvania
(Great Seal)

Attest:
GENE D. SMITH
Gene D. Smith
Secretary of the
Commonwealth

SEC. 2. Subject to the provisions of the compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission, as amended and supplemented, the Delaware River Port Authority (herein called the "commission"), formerly the Deleware River Joint Commission, is hereby authorized to construct, acquire, finance, operate, maintain and own bridges and tunnels across or under the Delaware River, including any bridge heretofore constructed under the authority or with the consent of the Congress, with such approaches thereto and highway connections as may be necessary or desirable, in accordance with the applicable provisions of section 502(b) of the General Bridge Act of 1946 and section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C., sec. 403), and is further authorized to effectuate, establish, maintain, rehabilitate, construct and operate railroad or other facilities for the transportation of passengers across any such bridge or tunnel owned or controlled by the commission and a rapid transit system for passengers, express, mail, and baggage between points within the city of Philadelphia, Pennsylvania, and points within the State of New Jersey, and intermediate points.

SEC. 3. Notwithstanding any limitation on the collection of tolls as prescribed by section 506 of the General Bridge Act

of 1946, as amended, or as prescribed by any Act heretofore enacted by the Congress authorizing or consenting to the construction or acquisition of any bridge constructed or acquired by the commission, the commission is hereby authorized to fix, charge and collect tolls or other charges for the use of any bridge or tunnel heretofore or hereafter established, controlled, constructed, or acquired by the commission, and to combine any two or more of such bridges or tunnels, or combine any one or more of such bridges or tunnels, with any railroad, rapid-transit system, or other properties or facilities for transportation, terminal or port improvement purposes (each such bridge, tunnel, railroad, system, or other property or facility being hereinafter referred to as "facility") heretofore or hereafter established, controlled, constructed or acquired by the commission, and combine the tolls or revenues therefrom, and to fix, charge, and collect tolls or other charges for the use of such facilities so combined, and to use or pledge any such tolls or other charges for purposes of financing, acquiring, constructing, operating or maintaining any facility or facilities, all to the extent provided by and in accordance with the provisions of the aforesaid compact or agreement as amended and supplemented, as consented to by the Congress, and the laws of the State of New Jersey and Commonwealth of Pennsylvania with respect thereto or to said commission: *Provided,* That, as a specific exemption from the provisions of section 506 of the General Bridge Act of 1946, as amended, the collection of tolls for the use of any bridge hereafter constructed or acquired by the commission, in excess of amounts reasonably required for the operation and maintenance thereof under economical management, shall cease at the expiration of fifty years from the date of the opening to traffic by the commission of the bridge latest constructed or acquired by said commission after the effective date of this Act, and the rate of such tolls shall be subject to the provisions of section 503 of the General Bridge Act of 1946, as amended.

SEC. 4. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved July 17, 1952.

PUBLIC LAW 88-320 – June 13, 1964
78 STAT. 215

AN ACT

Granting the consent of Congress to a further supplemental compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania concerning the Delaware River Port Authority, formerly the Delaware River Joint Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the supplemental compact or agreement set forth below, and to each and every term and provision thereof: *Provided,* That nothing therein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over and in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of said supplemental compact or agreement or otherwise affected by the terms thereof: *Provided further,* That nothing in this Act shall be construed as granting the consent of Congress in advance to the performance or effectuation of any purposes set forth in article I, paragraph (1) not now otherwise permitted or provided for under the Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its power and duties, which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on July first, one thousand nine hundred and thirty-one, and on behalf of the State of New Jersey by the New Jersey Interstate Bridge Commission by its members on July first, one thousand nine hundred and thirty-one, and which was consented to by the Congress by Public Resolution Number twenty-six, being chapter two hundred fifty-eight of the Public Laws, Seventy-second Con-

gress, approved June fourteenth, one thousand nine hundred and thirty-two, as heretofore amended and supplemented and as amended and supplemented by the supplemental compact or agreement hereby consented to:

SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY FURTHER AMENDING AND SUPPLEMENTING THE AGREEMENT ENTITLED "AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY CREATING THE DELAWARE RIVER JOINT COMMISSION AS A BODY CORPORATE AND POLITIC AND DEFINING ITS POWERS AND DUTIES" ENLARGING THE PUBLIC PURPOSES OF THE DELAWARE RIVER PORT AUTHORITY AND EXTENDING ITS JURISDICTION, POWERS AND DUTIES AND DEFINING SUCH ADDITIONAL PURPOSES, JURISDICTION, POWERS AND DUTIES.

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree, each with the other, as follows:

(1) Article I of the compact or agreement entitled "Agreement between the Commonwealth of Pennsylvania and the State of New Jersey creating The Delaware River Joint Commission as a body corporate and politic and defining its powers and duties", which was executed on behalf of the Commonwealth of Pennsylvania by its Governor on July first, one thousand nine hundred and thirty-one, and on behalf of the State of New Jersey by the New Jersey Interstate Bridge Commission by its members on July first, one thousand nine hundred and thirty-one, and which was consented to by the Congress of the United States by Public Resolution Number twenty-six, being chapter two hundred fifty-eight of the Public Laws, Seventy-second Congress, approved June fourteenth, one thousand nine hundred and thirty-two, as heretofore amended and supplemented, is amended to read as follows:

ARTICLE I

The body corporate and politic, heretofore created and known as The Delaware River Joint Commission, hereby is

continued under the name of The Delaware River Port Authority (hereinafter in this agreement called the "commission"), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the States of New Jersey for the following public purposes and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

(a) The operation and maintenance of the bridge, owned jointly by the two States, across the Delaware River between the City of Philadelphia in the Commonwealth of Pennsylvania and the City of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

(b) The effectuation, establishment, construction, operation and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities within the City of Camden and the City of Philadelphia necessary for efficient operation in the Port District.

(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

(d) Cooperation with all other bodies interested or concerned with, or affected by the promotion, development or use of the Delaware River and the Port District.

(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware River, between the City of Philadelphia or the County of Delaware in the Commonwealth of Pennsylvania, and the

State of New Jersey, including approaches, and the making of additions and improvements thereto.

(g) The promotion as a highway of commerce of the Delaware River, and the promotion of increased passenger and freight commerce on the Delaware River and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware River.

(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates or other matters vital to the interest of the Port District: *Provided,* That notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express, mail, and baggage, or any of them, between points in New Jersey within the Port District and within a thirty-five (35) mile radius of the City of Camden, New Jersey, and points within the City of Philadelphia, Pennsylvania, and intermediate points. Such system may be established by utilizing existing rapid transit systems, railroad facilities, highways and bridges within the territory involved and by the construction or provision of new facilities where deemed necessary, and may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

(l) The performance or effectuation of such additional bridge, tunnel, railroad, rapid transit, transportation, transportation facility, terminal, terminal facility, and port improvement and development purposes within the Port District as may hereafter be delegated to or imposed upon it by the action of either State concurred in by legislation of the other.

(2) Said compact or agreement is further amended and supplemented by adding thereto, as a part thereof, following Article XII-A thereof, a new article reading as follows:

ARTICLE XII-B

(1) In addition to other public purposes provided for it and other powers and duties conferred upon it, and not in limitation thereof, and notwithstanding the provisions of any other article hereof, the Commission shall have among its authorized purposes, and it shall have the power to effectuate, the construction, operation and maintenance of a bridge for vehicular traffic across the Delaware River, between a point or points in the Township of Logan, New Jersey, and a point or points in the City of Chester, Pennsylvania, including approaches thereto.

(2) In addition to other public purposes provided for it and other powers and duties conferred upon it, and not in limitation thereof, and notwithstanding the provisions of any other article hereof, the Commission shall have among its authorized purposes, and it shall have the power to effectuate, the establishment, rehabilitation, equipment, construction, maintenance and operation of ferries for passengers and vehicular traffic over and across the Delaware River within the Port District between the Commonwealth of Pennsylvania and the State of New Jersey. Such ferries may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner, and may be established by utilizing any existing ferries within the Port District across the Delaware River between said Commonwealth and said State and by the construction or provision of new facilities where deemed necessary. Any such ferry may include such approach highways and interests in land or other property necessary

therefor in the Commonwealth of Pennsylvania or the State of New Jersey as may be determined by the Commission to be necessary to facilitate the flow of traffic in the vicinity of any such ferry or to connect any such ferry with the highway system or other traffic facilities in said Commonwealth or said State.

(3)(a) For the effectuation of any of its purposes authorized by this article, the Commission is hereby granted, in addition to any other powers heretofore or hereafter granted to it, power and authority to acquire in its name by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any such land and other property which it may determine is reasonably necessary to acquire for any of its purposes authorized by this article and any and all rights, title and interest in such land and other property, including public lands, parks, playgrounds, reservations, highways, or parkways, owned by or in which any county, city, borough, town, township, village, or other political subdivision of the State of New Jersey or the Commonwealth of Pennsylvania has any right, title or interest, or parts thereof or rights therein, and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect such land and other property. Upon the exercise of the power of eminent domain under this paragraph, the compensation to be paid with regard to property located in the State of New Jersey shall be ascertained and paid in the manner provided in Title 20 of the Revised Statutes of New Jersey insofar as the provisions thereof are applicable and not inconsistent with the provisions contained in this paragraph, and with regard to property located in the Commonwealth of Pennsylvania shall be ascertained and paid in the manner provided by the act approved the ninth day of July, one thousand nine hundred nineteen (Pamphlet Laws 814) and acts amendatory thereof and supplementary thereto, insofar as the provisions are applicable and not inconsistent with the provisions contained in this paragraph. The Commission may join in separate subdivisions in one petition or com-

plaint the descriptions of any number of tracts or parcels of such land and other property to be condemned, and the names of any number of owners and other parties who may have an interest therein, and all such land and other property included in said petition or complaint may be condemned in a single proceeding: *Provided, however.* That separate awards shall be made for each tract or parcel of such land or other property: *And provided further.* That each of said tracts or parcels of such land or other property lies wholly in or has a substantial part of its value lying wholly within the same county.

(b) Whenever the Commission acquires under this paragraph (3) the whole or any part of the right of way of a public utility located in the Commonwealth of Pennsylvania, the Commission shall, at its own expense, provide a substitute right of way on another and favorable location. Such public utility shall thereupon provide for the transfer to, or reconstruction upon, in, under or above said substitute right of way of any structures and facilities of said public utility located upon, in, under or above said original right of way at the time the same is so acquired. The Commission is hereby authorized to enter into agreements with such public utility to contribute toward the expense of such transfer or reconstruction, and in the event that they are unable to agree on the amount to be paid, the matter shall be referred to the Pennsylvania Public Utility Commission which shall, after hearing thereon, make a finding of the amount to be paid to such public utility by the Commission. In case of failure of such public utility, within a reasonable time after notice so to do, to remove its facilities to such substitute right of way, the Pennsylvania Public Utility Commission shall have jurisdiction, on petition of the Commission, to order such transfer or reconstruction. Any party to such proceedings shall have the right of appeal from the ruling of the Pennsylvania Public Utility Commission. The Delaware River Port Authority is hereby authorized to acquire, by purchase or by the exercise of the power of eminent domain, any necessary land or right of way for the relocation of any such public utility right of way and facilities. The substitute right of way thus acquired shall be equal in estate to the original right of way acquired from the public utility, and the Com-

mission shall deliver to the public utility a deed, duly executed and acknowledged, conveying to it an estate in the substitute right of way at least equal to that owned by the public utility in the original right of way, or if such substitute right of way is to be acquired by purchase, the Commission shall procure and deliver to the public utility a deed conveying such estate to it from the owner of the land on which such substitute right of way is located.

This sub-paragraph (b) shall have no application to the relocation of public utility facilities located in the beds of public streets, roads or highways.

(c) In addition to any other powers heretofore or hereafter granted to it, the Commission, in connection with construction or operation of any project for the effectuation of any of its purposes authorized by this article, shall have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles or any other equipment and appliances (in this sub-paragraph (c) called "works") located in the State of New Jersey of any public utility as defined in section 48:2-13 of the revised statutes of New Jersey, in, on, along, over or under any such project. Whenever in connection with the construction or operation of any such project the Commission shall determine that it is necessary that any such works, which now are or hereafter may be located in, on, along, over or under any such project should be relocated in such project, or should be removed therefrom, the public utility owning or operating such works shall relocate or remove the same in accordance with the order of the Commission, provided, however, That, except in the case of the relocation or removal of such works located in, or, along, over or under public streets, roads or highways, the cost and expenses of such relocation or removal, including the cost of installing such works in a new location or new locations, and the cost of any lands or any rights or interest in lands or any other rights acquired to accomplish such relocation or removal, less the cost of any lands or any rights or interests in lands or any other rights of the public utility paid to the public utility in connection with the relocation or

removal of such works, shall be paid by the Commission and shall be included in the cost of such project. In case of any such relocation or removal of works as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such works, with the necessary appurtenances, in the new location or new locations for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such works in their former location.

In case of any such relocation or removal of works, as aforesaid, the Commission shall own and maintain, repair and renew structures within the rights of way of railroad companies carrying any such project over railroads, and the Commission shall bear the cost of maintenance, repair and renewal of structures within the rights of way of railroad companies carrying railroads over any such project, but this provision shall not relieve any railroad company from responsibility for damage caused to any authority or railroad structure by the operation of its railroad. Such approaches, curbing, sidewalk paving, guard rails on approaches and surface paving on such projects as shall be within the rights of way of a railroad company or companies shall be owned and maintained, repaired and renewed by the Commission; rails, pipes and lines shall be owned and maintained, repaired and renewed by the railroad company or companies.

(4) The power and authority granted in this article to the Commission to construct new or additional approach highways shall not be exercised unless and until the Department of Highways of the Commonwealth of Pennsylvania shall have filed with the Commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the Commission its written approval as to approach highways to be located in said State.

(5) The effectuation of any of the purposes authorized by this article, and the exercise or performance by the Commission of any of its powers or duties in connection with effectuation of any such purpose, shall not be subject to any restrictions, limitations or provisions provided for or set forth in

Article XII hereof. The bridge or ferries referred to in this article may be established, constructed or erected by the Commission notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey.

(6) The Commission shall not construct or erect the bridge referred to in this article unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania shall have filed with the Commission their written consents to such construction or erection.

(7) The Commission is hereby granted the following powers in addition to any other powers heretofore or hereafter granted to it:

(a) To abandon, close off, dismantle, sell or otherwise dispose of, any project or facility, or any part thereof, or any other property, which the Commission may determine to be no longer useful or necessary for public use.

(b) To effectuate any of its authorized purposes either directly or indirectly by or through wholly owned subsidiary corporations. Any such subsidiary corporation shall be a public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for such purposes and shall be deemed to be exercising an essential governmental function in effectuating such purposes. Any such subsidiary corporation and any of its property, functions and activities shall have such of the privileges, immunities, tax and other exemptions of the Commission and of the Commission's property, functions and activities, and such of the rights, powers and duties of the Commission, as the Commission shall determine.

(8) The power of the Commission, which is hereby confirmed, to purchase, construct, lease, finance, operate, maintain and own a terminal facility consisting in whole or in part of a parking area or place, garage, building, improvement, structure, or other accommodation for the parking or storage of motor or other vehicles, including all real or personal property necessary or desirable in connection therewith, shall, notwithstanding any other provision of this agreement, be exercised only at such place, in the vicinity of and in connection

with, or as a part of any bridge, tunnel, ferry, railroad, rapid transit system, transportation or terminal facility, as the Commission may determine to be necessary or desirable.

IN WITNESS WHEREOF, this 25th day of June, 1963, RICHARD J. HUGHES has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached hereto.

S/ Richard J. Hughes
GOVERNOR,
STATE OF NEW JERSEY

Attest:

S/ Robert J. Burkhardt
SECRETARY OF STATE

IN WITNESS WHEREOF, this 26th day of June, 1963, WILLIAM W. SCRANTON has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached hereto.

S/ William W. Scranton
GOVERNOR,
COMMONWEALTH OF PENNSYLVANIA

Attest:

S/ George I. Bloom
SECRETARY OF THE COMMONWEALTH

SEC. 2. Public Laws 573 and 574, being respectively chapter 921 and chapter 922 of the Public Laws, Eighty-second Congress, second session, both approved July 17, 1952, are hereby confirmed and continued and shall be construed to apply to the aforesaid supplemental compact or agreement as if the supplemental compact or agreement had been consented to by such Public Laws.

SEC. 3. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved June 13, 1964.

PUBLIC LAW 102-544 — OCT. 27, 1992
106 STAT. 3576

DELAWARE RIVER PORT AUTHORITY

An Act granting the consent of the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress consents to a supplemental compact or agreement between The Commonwealth of Pennsylvania and the State of New Jersey amending articles I, II, III, IV, XII, and XIII of the compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey entitled "Agreement Between The Commonwealth of Pennsylvania and The State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its powers and duties". The supplemental compact or agreement is substantially as follows:

(1) Article I of the "Agreement Between The Commonwealth of Pennsylvania and The State of New Jersey creating the Delaware River Joint Commission as a body corporate and politic and defining its powers and duties"; as amended and supplemented, is amended to read as follows:

"The body corporate and politic, heretofore created and known as the Delaware River Joint Commission hereby is continued under the name of the Delaware River Port Authority (hereinafter in this agreement called the 'commission'), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

"(a) The operation and maintenance of the bridge, owned jointly by the 2 States, across the Delaware River between the city of Philadelphia in the Commonwealth of

Pennsylvania and the city of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

"(b) The effectuation, establishment, construction, acquisition, operation, and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities necessary for efficient operation in the Port District.

"(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance, or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease, or contract, or by lease or agreement with any other public or private body or corporation or in any other manner.

"(d) Co-operation with all other bodies interested or concerned with, or affected by the promotion, development or use of the Delaware River and the Port District.

"(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

"(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware River, between the city of Philadelphia or the county of Delaware in the Commonwealth of Pennsylvania and the State of New Jersey, including approaches and the making of additions and improvements thereto.

"(g) The promotion as a highway of commerce of the Delaware River, and the promotion of increased passenger and freight commerce on the Delaware River and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

"(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware River.

"(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates, or other matters vital to the interest of the Port District; provided, that notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

"(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express mail, and baggage, or any of them, between points in New Jersey within the Port District and points in Pennsylvania within the Port District, and intermediate points. Such system may be established either by utilizing existing rapid transit systems, railroad facilities, highways, and bridges within the territory involved or by the construction or provision of new rail facilities where deemed necessary, and may be established either directly by purchase, lease, or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

"(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

"(l) The performance or effectuation of such additional bridge, tunnel, railroad, rapid transit, transportation, transportation facility, terminal, terminal facility, and port improvement and development purposes within the Port District as may hereafter be delegated to or imposed upon it by the action of either State concurred in by legislation of the other.

"(m) The unification of the ports of the Delaware River through (i) the acquisition or taking control of any terminal, terminal facility, transportation facility or marine terminal or port facility or associated property within the Port District through purchase, lease, or otherwise, or by the acquisition, merger, becoming the successor to or entering into contracts,

agreements, or partnerships with any other port corporation, port authority, or port related entity which is located within the Port District, all in accordance with the applicable laws of the State in which the facility, corporation, or authority is located; (ii) the exercise of the other powers granted by this compact; or (iii) the establishment (whether solely or jointly with any other entity or entities) of such subsidiary corporation or corporations or maritime or port advisory committees as may be necessary or desirable to effectuate this purpose.

"(n) The planning, financing, development, acquisition, construction, purchase, lease, maintenance, marketing, improvement and operation of any project, including but not limited to any terminal, terminal facility, transportation facility, or any other facility of commerce or economic development activity; from funds available after appropriate allocation for maintenance of bridge and other capital facilities.".

(2) Article II of the agreement is amended to read as follows:

"The commission shall consist of sixteen commissioners eight resident voters of the Commonwealth of Pennsylvania and eight resident voters of the State of New Jersey, who shall serve without compensation.

"The commissioners for the State of New Jersey shall be appointed by the Governor of New Jersey with the advice and consent of the Senate of New Jersey, for terms of five years, and in case of a vacancy occurring in the office of commissioner during a recess of the Legislature, it may be filled by the Governor by an ad interim appointment which shall expire at the end of the next regular session of the Senate unless a successor shall be sooner appointed and qualify and, after the end of the session, no ad interim appointment to the same vacancy shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it, and no person nominated for any such vacancy shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

"Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall be ex officio commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at a meeting of the commission which he does not attend personally. Any commissioner who is an elected public official shall have the privilege of appointing a representative to serve and act in his place at any meeting of the commission which he does not attend personally.

"All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but a period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.".

(3) Article III of the agreement is amended to read as follows:

"The commissioners shall have charge of the commission's property and affairs and shall for the purpose of doing business constitute a board, but no action of the commissioners shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

"Notwithstanding the above, each State reserves the right to provide by law for the exercise of a veto power by the Governor of that State over any action of any commissioner from that State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes, and for notification of the action thereon."

(4) Article IV of the agreement is amended to read as follows:

"For the effectuation of its authorized purposes the commission is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To sue and be sued.

"(c) To adopt and use an official seal.

"(d) To elect a chairman, vice-chairman, secretary, and treasurer, and to adopt suitable bylaws for the management of its affairs. The secretary and treasurer need not be members of the commission.

"(e) To appoint, hire, or employ counsel and such other officers and such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties, and compensation.

"(f) To enter into contracts.

"(g) To acquire, own, hire, use, operate, and dispose of personal property.

"(h) To acquire, own, use, lease, operate, mortgage, and dispose of real property and interests in real property, and to make improvements thereon.

"(i) To grant by franchise, lease, or otherwise, the use of any property or facility owned or controlled by the commission and to make charges therefor.

"(j) To borrow money upon its bonds or other obligations, either with or without security, and to make, enter into, and perform any and all such covenants and agreements with the holders of such bonds or other obligations as the commission may determine to be necessary or desirable for the security and payment thereof, including without limitation of the foregoing, covenants and agreements as to the management and operation of any property or facility owned or controlled by it, the tolls, rents, rates, or other charges to be established, levied, made, and collected for any use of any such property or facility, or the application, use, and disposition of the proceeds of any bonds or other obligations of the commission

or the proceeds of any such tolls, rents, rates, or other charges or any other revenues or moneys of the commission.

"(k) To exercise the right of eminent domain within the Port District.

"(l) To determine the exact location, system, and character of and all other matters in connection with any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(m) In addition to the foregoing, to exercise the powers, duties, authority, and jurisdiction heretofore conferred and imposed upon the aforesaid the Delaware River Joint Commission by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said 2 States.

"(n) To exercise all other powers not inconsistent with the constitutions of the 2 States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"(o) To acquire, purchase, construct, lease, operate, maintain, and undertake any project, including any terminal, terminal facility, transportation facility, or any other facility of commerce and to make charges for the use thereof.

"(p) To make expenditures anywhere in the United States and foreign countries, to pay commissions, and hire or contract with experts or consultants, and otherwise to do indirectly anything which the commission may do directly.

"(q) To establish 1 or more operating divisions as deemed necessary to exercise the power and effectuate the purposes of this agreement.

"The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.

"It is the policy and intent of the Legislature of the Commonwealth of Pennsylvania and the State of New Jersey that the powers granted by this article shall be so exercised that the American system of free competitive private enterprise is given full consideration and is maintained and furthered. In making its reports and recommendations to the Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey on the need for any facility or project which the commission believes should be undertaken for the promotion and development of the Port District, the commission shall include therein its findings which fully set forth that the facility or facilities operated by private enterprise within the Port District and which it is intended shall be supplanted or added to are not adequate".

(5) Article XII of the agreement is amended to read as follows:

"The Commission shall, within 90 days after the end of each fiscal year, submit to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey a complete and detailed report of the following:

"(1) its operations and accomplishments during the completed fiscal year;

"(2) its receipts and disbursements or revenues and expenses during that year in accordance with the categories and classifications established by the commission for its own operating and capital outlay purposes;

"(3) its assets and liabilities at the end of the fiscal year, including the status of reserve, depreciation, special or other funds including debits and credits of these funds;

"(4) a schedule of bonds and notes outstanding at the end of the fiscal year;

"(5) a list of all contracts exceeding $100,000 entered into during the fiscal year;

"(6) a business or strategic plan for the commission and for each of its operating divisions; and

"(7) a five year capital plan.

"Not less than once every five years, the commission shall cause a management audit of its operational effectiveness and efficiency to be conducted by an independent consulting firm selected by the commission. The first management audit to be conducted shall commence within 3 years of the date of coming into force of the supplemental compact or agreement authorized by this 1991 amendatory act. This audit is in addition to any other audit which the commission determines to conduct from time to time.

"The commission shall, not later than 2 years after the date of the coming into force of the supplemental compact or agreement authorized by this 1991 amendatory act, prepare a comprehensive master plan for the development of the Port District. The plan shall include, but not be limited to, plans for the construction, financing, development, reconstruction, purchase, lease, improvement, and operation of any terminal, terminal facility, transportation facility or any other facility of commerce or economic development activity. The master plan shall include the general location of such projects and facilities as may be included in the master plan and shall to the maximum extent practicable include, but not be limited to, a general description of each such project and facility, the land use requirements necessary therefor, and estimates of project costs and of a schedule for commencement of each such project. Prior to adopting such master plan, the commission shall give written notice to, afford a reasonable opportunity for comment, consult with and consider any recommendations from States, county and municipal government, as well as commissions, public corporations and authorities, and the private sector. The commission may modify or change any part of the plan in the same form and manner as provided for the adoption of the original plan. At the time the commission authorizes any project or facility, the commission shall promptly provide to the Governor and Legislature of each State a

detailed report on the project including its status within the master plan. The commission shall include within the authorization a status of the project or facility in the master plan and any amendment thereof, and no project shall be authorized if not included in the master plan or amendment thereof. Any project which has been commenced and approved by the commission prior to the adoption of the master plan shall be included, for informational purposes only, in the master plan. The commission shall provide notice of such on-going projects to those States, county and municipal governments, as well as entities in the private sector who would be entitled to such notice had the project not been commenced in anticipation of adopting the master plan, but there shall be no requirement that the project be delayed or deferred due to these provisions.

"In addition to other powers conferred upon it, and not in limitation thereof, the commission may acquire all right, title and interest in and to the Tacony-Palmyra bridge, across the Delaware River at Palmyra, New Jersey, together with any approaches and interests in real property necessary thereto. The acquisition of such bridge, approaches and interests by the commission shall be by purchase or by condemnation in accordance with the provisions of the Federal law consenting to or authorizing the construction of such bridge or approaches, or the acquisition of such bridge, approaches or interests by the commission shall be pursuant to and in accordance with the provisions of section 48:5–22 and 48:5–23 of the Revised Statutes of New Jersey, and for all the purposes of said provisions and sections the commission is hereby appointed as the agency of the State of New Jersey and the Commonwealth of Pennsylvania exercising the rights and powers granted or reserved by said Federal law or sections to the State of New Jersey and Commonwealth of Pennsylvania jointly or to the State of New Jersey acting in conjunction with the Commonwealth of Pennsylvania. The commission shall have authority to so acquire such bridge, approaches and interests, whether the same be owned, held, operated or maintained by any private person, firm, partnership, company, association or corporation or by any instrumentality, public body,

commission, public agency or political subdivision (including any county or municipality) of, or created by or in, the State of New Jersey or the Commonwealth of Pennsylvania, or by any instrumentality, public body, commission, or public agency of, or created by or in, a political subdivision (including any county or municipality) of the State of New Jersey or the Commonwealth of Pennsylvania. None of the provisions of the preceding paragraph shall be applicable with respect to the acquisition by the commission, pursuant to this paragraph, of said Tacony-Palmyra bridge, approaches and interests. The power and authority herein granted to the commission to acquire said Tacony-Palmyra bridge, approaches and interests shall not be exercised unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania have filed with the commission their written consents to such acquisition.

"Notwithstanding any provision of this agreement, nothing herein contained shall be construed to limit or impair any right or power granted or to be granted to the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority, to finance, construct, operate, and maintain the Pennsylvania Trunpike System or any turnpike project of the New Jersey Turnpike Authority, respectively, throughout the Port District, including the right and power, acting alone or in conjunction with each other, to provide for the financing, construction, operation, and maintenance of one bridge across the Delaware River south of the city of Trenton in the State of New Jersey; provided that such bridge shall not be constructed within a distance of 10 miles, measured along the boundary line between the Commonwealth of Pennsylvania and the State of New Jersey, from the existing bridge, operated and maintained by the commission, across the Delaware River between the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, so long as there are any outstanding bonds or other securities or obligations of the commission for which the tolls, rents, rates, or other revenues, or any part thereof, of said

existing bridge shall have been pledged. Nothing contained in this agreement shall be construed to authorize the commission to condemn any such bridge.

"Anything herein contained to the contrary notwithstanding, no bridge or tunnel shall be constructed, acquired, operated, or maintained by the commission across or under the Delaware River north of the boundary line between Bucks County and Philadelphia county in the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, and any new bridge or tunnel authorized by or pursuant to this compact or agreement to be constructed or erected by the commission may be constructed or erected at any location south of said boundary line notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey. Except as may hereafter be otherwise provided in conformity with Article IX hereof with respect to specific properties designated by action of the Legislatures of both of the signatory States, no property or facility owned or controlled by the commission shall be acquired from it by any exercise of powers of condemnation or eminent domain.".

(6) Article XIII of the agreement is amended to read as follows:

"As used herein, unless a different meaning clearly appears from the context:

" 'Port District' shall mean all the territory within the counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia in Pennsylvania, and all the territory within the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem in New Jersey.

" 'Commission' shall mean the Delaware River Port Authority and, when required by the context, the board constituting the governing body thereof in charge of its property and affairs.

" 'Commissioner' shall mean a member of the governing body of the Delaware River Port Authority.

" 'Economic development activity' or 'economic development' means any structure or facility or any development within the Port District in connection with manufacturing,

port-oriented development, foreign trade zone site development or research, commercial, industrial, or recreational purposes, or for purposes of warehousing or consumer and supporting services directly relating to any of the foregoing or to any authority project or facility which are required for the sound economic development of the Port District.

" 'Terminal' shall include any marine, motor truck, motorbus, railroad, and air terminal or garage, also any coal, grain, and lumber terminal and any union freight and other terminals used or to be used in connection with the transportation of passengers and freight, and equipment, materials, and supplies therefor.

" 'Transportation facility' and 'facilities for transportation of passengers' shall include railroads operated by steam, electricity, or other power, rapid transit lines, motor trucks, motorbuses, tunnels, bridges, airports, boats, ferries, carfloats, lighters, tugs, floating elevators, barges, scows, or harbor craft of any kind, and aircraft, and equipment, materials, and supplies therefor.

" 'Terminal facility' shall include wharves, piers, slips, berths, ferries, docks, drydocks, ship repair yards, bulkheads, dock walls, basins, carfloats, floatbridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds switches, connections, overhead appliances, bunker coal, oil, and fresh water stations, markets, and every kind of terminal, storage, or supply facility now in use, or hereafter designed for use to facilitate passenger transportation and for the handling, storage, loading, or unloading of freight at terminals, and equipment, materials, and supplies therefor.

" 'Transportation of passengers' and 'passenger transportation' shall mean the transportation of passengers by railroad or other facilities.

" 'Rapid transit system' shall mean a transit system for the transportation of passengers, express mail, and baggage by railroad or other facilities, and equipment, materials, and supplies therefor.

" 'Project' shall mean any improvement, betterment, facility or structure authorized by or pursuant to this compact or

agreement to be constructed, erected, acquired, owned, or controlled or otherwise undertaken by the commission. 'Project' shall not include undertakings for purposes described in Article I, subdivisions (d), (e), (g), (h), and (i).

" 'Railroad' shall include railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires conduits, powerhouses, substations, lines for the transmission of power, carbarns, shops, yards, sidings, turnouts, switches, stations, and approaches thereto, cars, and motive equipment.

" 'Bridge' and 'tunnel' shall include such approach highways and interests in real property necessary therefor in the Commonwealth of Pennsylvania or the State of New Jersey as may be determined by the commission to be necessary to facilitate the flow of traffic in the vicinity of a bridge or tunnel or to connect a bridge or tunnel with the highway system or other traffic facilities in said Commonwealth or said State; provided, however, that the power and authority herein granted to the commission to construct new or additional approach highways shall not be exercised unless and until the Department of Transportation of the Commonwealth of Pennsylvania shall have filed with the commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the commission its written approval as to approach highways to be located in said State.

"'Facility' shall include all works, buildings, structures, property, appliances, and equipment, together with appurtenances necessary and convenient for the proper construction, equipment, maintenance, and operation of a facility or any 1 or more of them.

" 'Personal property' shall include choses in action and all other property now commonly, or legally, defined as personal property, or which may hereafter be so defined.

" 'Lease' shall include rent or hire.

" 'Municipality' shall include a county, city, borough, village, township, town, public agency, public authority, or political subdivision.

"Words importing the singular number include the plural number and vice versa.

"Wherever legislation or action by the Legislature of either signatory State is herein referred to it shall mean an act of the Legislature duly adopted in accordance with the provisions of the Constitution of such State.".

Approved October 27, 1992.

APPENDIX G

PENNSYLVANIA COLLECTIVE BARGAINING BY POLICEMEN OR FIREMEN ACT (43 P.S. §§ 217.1 to .10)

§ 217.1. Right to bargain

Policemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

1968, June 24, P.L. 237, No. 111, § 1.

§ 217.2. Effort to settle disputes

It shall be the duty of public employers and their policemen and firemen employes to exert every reasonable effort to settle all disputes by engaging in collective bargaining in good faith and by entering into settlements by way of written agreements and maintaining the same.

1968, June 24, P.L. 237, No. 111, § 2.

§ 217.3. Time to begin bargaining and request arbitration

Collective bargaining shall begin at least six months before the start of the fiscal year of the political subdivision or of the Commonwealth, as the case may be, and any request for arbitration, as hereinafter provided, shall be made at least one hundred ten days before the start of said fiscal year.

1968, June 24, P.L. 237, No. 111, § 3.

§ 217.4. Impasse, failure to approve agreement; notice; arbitration request; board members, chairman; time for proceeding and determination

(a) If in any case of a dispute between a public employer and its policemen or firemen employes the collective bargain-

ing process reaches an impasse and stalemate, or if the appropriate lawmaking body does not approve the agreement reached by collective bargaining, with the result that said employers and employes are unable to effect a settlement, then either party to the dispute, after written notice to the other party containing specifications of the issue or issues in dispute, may request the appointment of a board of arbitration.

For purposes of this section, an impasse or stalemate shall be deemed to occur in the collective bargaining process if the parties do not reach a settlement of the issue or issues in dispute by way of a written agreement within thirty days after collective bargaining proceedings have been initiated.

In the case of disputes involving political subdivisions of the Commonwealth, the agreement shall be deemed not approved within the meaning of this section if it is not approved by the appropriate lawmaking body within one month after the agreement is reached by way of collective bargaining.

In the case of disputes involving the Commonwealth, the agreement shall be deemed not approved within the meaning of this section if it is not approved by the Legislature within six months after the agreement is reached by way of collective bargaining.

(b) The board of arbitration shall be composed of three persons, one appointed by the public employer, one appointed by the body of policemen or firemen involved, and a third member to be agreed upon by the public employer and such policemen or firemen. The members of the board representing the public employer and the policemen or firemen shall be named within five days from the date of the request for the appointment of such board. If, after a period of ten days from the date of the appointment of the two arbitrators appointed by the public employer and by the policemen or firemen, the third arbitrator has not been selected by them, then either arbitrator may request the American Arbitration Association, or its successor in function, to furnish a list of three members of said association who are residents of Pennsylvania from which the third arbitrator shall be selected. The arbitrator

appointed by the public employer shall eliminate one name from the list within five days after publication of the list, following which the arbitrator appointed by the policemen or firemen shall eliminate one name from the list within five days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as chairman of the board of arbitration. The board of arbitration thus established shall commence the arbitration proceedings within ten days after the third arbitrator is selected and shall make its determination within thirty days after the appointment of the third arbitrator.

1968, June 24, P.L. 237, No. 111, § 4.

§ 217.5. Service of notice specifying issues in dispute

Notice by the policemen or firemen involved under section 4[1] shall, in the case of disputes involving the Commonwealth, be served upon the Secretary of the Commonwealth and, in the case of disputes involving political subdivisions of the Commonwealth, shall be served upon the head of the governing body of the local governmental unit involved.
1968, June 24, P.L. 237, No. 111, § 5.

[1] 43 P.S. § 217.4.

§ 217.6. Oaths; witnesses; subpoena

Each of the arbitrators selected in accordance with section 4 hereof[1] shall have the power to administer oaths and compel the attendance of witnesses and physical evidence by subpoena.
1968, June 24, P.L. 237, No. 111, § 6.

[1] 43 P.S. § 217.4.

§ 217.7. Determination; appeal; implementation; effective date of legislation

(a) The determination of the majority of the board of arbitration thus established shall be final on the issue or issues in dispute and shall be binding upon the public employer and the policemen or firemen involved. Such determination shall

be in writing and a copy thereof shall be forwarded to both parties to the dispute. No appeal therefrom shall be allowed to any court. Such determination shall constitute a mandate to the head of the political subdivision which is the employer, or to the appropriate officer of the Commonwealth if the Commonwealth is the employer, with respect to matters which can be remedied by administrative action, and to the lawmaking body of such political subdivision or of the Commonwealth with respect to matters which require legislative action, to take the action necessary to carry out the determination of the board of arbitration.

(b) With respect to matters which require legislative action for implementation, such legislation shall be enacted, in the case of the Commonwealth, within six months following publication of the findings, and, in the case of a political subdivision of the Commonwealth, within one month following publication of the findings. The effective date of any such legislation shall be the first day of the fiscal year following the fiscal year during which the legislation is thus enacted.

1968, June 24, P.L. 237, No. 111, § 7.

§ 217.8. Compensation of arbitrators; expenses

The compensation, if any, of the arbitrator appointed by the policemen or firemen shall be paid by them. The compensation of the other two arbitrators, as well as all stenographic and other expenses incurred by the arbitration panel in connection with the arbitration proceedings, shall be paid by the political subdivision or by the Commonwealth, as the case may be.

1968, June 24, P.L. 237, No. 111, § 8.

§ 271.9. Application of act

The provisions of this act shall be applicable to every political subdivision of this Commonwealth notwithstanding the fact that any such political subdivision, either before or after the passage of this act, has adopted or adopts a home rule charter.

1968, June 24, P.L. 237, No. 111, § 9.

§ 217.10. Severability provision

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to this end the provisions of this act are declared to be severable.

1968, June 24, P.L. 237, No. 111, § 10.

APPENDIX H

NEW JERSEY POLICE AND FIRE PUBLIC INTEREST ARBITRATION REFORM ACT (34:13A-1 to -29)

34:13A-14a. Short title; Police and Fire Public Interest Arbitration Reform Act

This act shall be known and may be cited as the "Police and Fire Public Interest Arbitration Reform Act."

L.1995, c. 425, § 1, eff. Jan. 10, 1996.

34:13A-15. Definitions

"Public fire department" means any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting provided that such firefighting employees are included in a negotiating unit exclusively comprised of firefighting employees.

"Public police departments" means any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, county parks and park commissions, grades of sheriff's officers and investigators; State motor vehicle officers, inspectors and investigators of the Alcoholic Beverage Commission, conservation officers in Fish, Game and Shell Fisheries, rangers in parks, marine patrolmen; correction officers, keepers, cottage officers, interstate escort officers, juvenile officers in the Department of Corrections and patrolmen of the Human Services and Corrections Departments; patrolmen of Capitol police and patrolmen of the Palisades Interstate Park Commission.

L.1977, c.85, § 2, eff. May 10, 1977.

34:13A-16. Public fire and police departments; impasse in labor disputes; mediation, factfindings, terminal procedures and compulsory arbitration

a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.

(2) Whenever those negotiations concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary resolution of the impasse.

b. (1) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke factfinding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the factfinder's report and recommended terms of settlement. Factfindings shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation. In the event of a continuing failure to resolve an impasse by means of the procedure set forth in this paragraph, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission, at a time and in a manner prescribed by the commission, as to whether

or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval.

(2) Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

Within 10 days of the receipt of the notice by the nonpetitioning party, the parties shall notify the commission as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval. If the parties fail to agree on a terminal procedure, they shall be subject to the provisions of subsection d. of this section.

c. Terminal procedures that are approvable include, but shall not be limited to the following:

(1) Conventional arbitration of all unsettled items.

(2) Arbitration under which the award by an arbitrator or panel of arbitrators is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, as a single package.

(3) Arbitration under which the award is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis.

(4) If there is a factfinder's report with recommendations on the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice among three positions: (a) the last offer of the employer as a single

package, (b) the last offer of the employees' representative as a single package, or (c) the factfinder's recommendations as a single package.

(5) If there is a factfinder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice on each issue from among three positions: (a) the last offer of the employer on the issue, (b) the employee representative's last offer on the issue, or (c) the factfinder's recommendation on the issue.

(6) Arbitration under which the award on the economic issues in dispute is confined to a choice between (a) the last offer of the employer on the economic issues as a single package and (b) the employee representative's last offer on the economic issues as a single package; and, on any noneconomic issues in dispute, the award is confined to a choice between (a) the last offer of the employer on each issue in dispute and (b) the employee representative's last offer on that issue.

d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its spe-

cial panel of arbitrators. Unless the parties, in a time and manner prescribed by the commission, mutually agree upon the selection of an arbitrator from the commission's special panel of arbitrators and so notify the commission in writing of that selection, the assignment of any arbitrator for the purposes of this act shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the arbitrator for assignment by lot.

In any proceeding where an arbitrator selected by mutual agreement is unable to serve, the two parties shall be afforded an opportunity to select a replacement. If the two parties are unable to mutually agree upon the selection of a replacement within a time period prescribed by the commission, the commission shall select the replacement in the manner hereinafter provided.

In any proceeding where an assigned arbitrator is unable to serve or, pursuant to the preceding paragraph, the two parties are unable to mutually agree upon a replacement, the commission shall assign a replacement arbitrator. The assignment shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the replacement arbitrator for assignment by lot.

(2) Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments.

The commission may suspend, remove, or otherwise discipline an arbitrator for a violation of P.L.1977, c. 85 (C.34:13A-14 et seq.), section 4 of P.L.1995, c. 425 (C.34:13A-16.1) or for good cause.

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator or tripartite panel of arbitrators their final offers on each economic and noneconomic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) of subsection d. of this section. The commission shall promulgate rules and procedures

governing the submission of the offers required under this paragraph, including when those offers shall be deemed final, binding and irreversible.

(2) In the event of a dispute, the commission shall have the power to decide which issues are economic issues. Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

(3) Throughout formal arbitration proceedings the chosen arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement.

(4) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 120 days of the selection of the arbitrator by the mutual agreement of both parties or the commission's assignment of that arbitrator or panel of arbitrators, as the case may be, pursuant to paragraph (1) of subsection e. of this section; provided, however, the arbitrator or panel of arbitrators, for good cause, may petition the commission for an extension of not more than 60 days. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the commission of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this paragraph may be subject to the commission's powers under paragraph (2) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 days of receiving an award, an aggrieved party may file notice of an appeal of an award to the commission on the grounds that the arbitrator failed to apply the criteria specified in subsection g. of this section or violated the

standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the commission, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.

(b) An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the receipt of the commission's decision absent a stay.

(6) The parties shall bear the costs of arbitration subject to a fee schedule approved by the commission.

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant to the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c. 68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

Amended by L.1995, c. 425, § 3, eff. Jan. 10, 1996; L.1997, c. 183, § 1, eff.Aug. 1, 1997.

34:13A-16.1. Continuing education program for arbitrator appointed to special panel; participation required

The commission shall establish an annual continuing education program for the arbitrators appointed to its special panel of arbitrators. The program shall include sessions or seminars on topics and issues of relevance and importance to arbitrators serving on the commission's special panel of arbitrators, such as public employer budgeting and finance, public management and administration, employment trends and labor costs in the public sector, pertinent court decisions, employment issues relating to law enforcement officers and firefighters, and such other topics as the commission shall deem appropriate and necessary. In preparing the curriculum for the annual education program required under this section, the commission shall solicit suggestions from employees' representatives and public employers concerning the topics and issues each of those parties deem relevant and important.

Every arbitrator shall be required to participate in the commission's continuing education program. If a mediator or

an arbitrator in any year fails to participate, the commission may remove that person from its special panel of arbitrators. If an arbitrator fails to participate in the continuing education program for two consecutive years, the commission shall immediately remove that individual from the special panel.

L.1995, c. 425, § 4, eff. Jan. 10, 1996.

34:13A-16.2. Guidelines for determining comparability of jurisdictions

a. The commission shall promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2) of subsection g. of section 3 of P.L.1977, c. 85 (C. 34:13A-16).

b. The commission shall review the guidelines promulgated under this section at least once every four years and may modify or amend them as is deemed necessary; provided, however, that the commission shall review and modify those guidelines in each year in which a federal decennial census becomes effective pursuant to R.S. 52:4-1.

L.1995, c. 425, § 5, eff. Jan. 11, 1996.

34:13A-16.3. Fee schedule

The commission may establish a fee schedule to cover the costs of effectuating the provisions of P.L.1977, c. 85 (C. 34:13A-14 et seq.), as amended and supplemented; provided, however, that the fees so assessed shall not exceed the commission's actual cost of effectuating those provisions.

L.1995, c. 425, § 6, eff. Jan. 10, 1996.

34:13A-16.4. Biennial reports to Governor and Legislature

The commission shall submit biennial reports to the Governor and the Legislature on the effects of this amendatory and supplementary act on the negotiations and settlements between local governmental units and their public police departments and public fire departments and to include with that report any recommendations it may have for changes in

the law. The reports required under this section shall be submitted in January of even numbered years.

L.1995, c. 425, § 7, eff. Jan. 10, 1996.

34:13A-16.5. Rules and regulations

The commission, in accordance with the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

L.1995, c. 425, § 8, eff. Jan. 10, 1996.

34:13A-16.6. Private sector wage increase survey conducted on county and state basis; public document

Beginning on the July 1 next following the enactment of P.L.1995, c. 425 (C. 34:13A-14a et al.) and each July 1 thereafter, the New Jersey Public Employment Relations Commission shall perform, or cause to be performed, a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. The survey shall include information on a Statewide and countywide basis. The survey shall be completed by September 1 next following enactment and by September 1 of each year thereafter. The survey shall be a public document and the commission shall make it available to all interested parties at a cost not exceeding the actual cost of producing the survey.

L.1995, c. 425, § 9, eff. Jan. 10, 1996.

34:13A-17. Powers of arbitrator

The arbitrator may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as he may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitrator may, or the Attorney

General if requested shall, invoke the aid of the Superior Court within the county in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

L.1995, c. 85, § 4, eff. May 10, 1977.

34:13A-18. Prohibited issues in finding, opinion or order of arbitrator

The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor, in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor shall the arbitrator issue any finding, opinion or order reducing, eliminating or otherwise modifying retiree benefits which exist as a result of a negotiated agreement, ordinance or resolution because of the enactment of legislation providing such benefits for those who do not already receive them.

Amended by L.1997, c. 330, § 4, eff. June 1, 1998.

34:13A-19. Decision; enforcement; venue; effective date of award; amendment or modification

The decision of the arbitrator may be forced at the instance of either party in the Superior Court with venue laid in the county in which the dispute arose. The commencement of a new public employer fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitrator or his decision. Increases in rates of compensation awarded by the arbitrator shall take effect on

the date of implementation prescribed in the award. The parties, by stipulation, may at any time amend or modify an award of arbitration.

L.1977, c. 85, § 6, eff. May 10, 1977.

34:13A-20. Repealed by L.1995, c. 425, § 10, eff. Jan. 10, 1996

34:13A-21. Change in conditions during pendency of proceedings; prohibition without consent

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

L.1977, c. 85, § 8, eff. May 10, 1977.

34:13A–22. Definitions

As used in this act:

"Commission" means the New Jersey Public Employment Relations Commission.

"Commissioner" means the Commissioner of Education.

"Discipline" includes all forms of discipline, except tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S. 18A:29-14.

"Employees" means employees of an employer as defined by this act.

"Employer" means any local or regional school district, educational services commission, jointure commission, county special services school district, or board or commission under the authority of the commissioner or the State Board of Education.

"Extracurricular activities" include those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year.

"Minor discipline" includes, but is not limited to, various forms of fines and suspensions, but does not include tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S. 18A:29-14, letters of reprimand, or suspensions with pay pursuant to section 1 of P.L.1971, c. 435 (C. 18A:6-8.3) and N.J.S. 18A:25-6.

"Regular work day, work week, or work year" means that period of time that all members of the bargaining unit are required to be present and at work.

"Teaching staff member" means a member of the professional staff of any employer holding office, position or employment of such character that the qualifications, for the office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to that office, position or employment, issued by the State Board of Examiners. "Teaching staff member" includes a school nurse.

L.1980, c. 209, § 1, eff. Jan. 4, 1990.

As amended, the bill also permits an employer to assign qualified teachers from within the district if it is not possible to locate a qualified person from outside of the district.

The bill provides public schools with the authority to impose minor discipline on employees, if negotiated. As amended, the bill defines minor discipline as including fines and suspensions, but not letters of reprimand, tenure changes, withholding of increments, or certain suspensions with pay. As amended, the bill permits an employer to use whatever disciplinary sanctions are authorized by law if there is no negotiated agreement regarding minor discipline. The bill includes in the scope of those negotiations the establishment of a schedule for the fines and suspensions. As amended, the bill also provides that all discipline, including reprimands, may be

appealed through the locally negotiated grievance procedures which must provide for binding arbitration as the final step in the procedure. The withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education.

The bill also forbids transfers of employees between sites for disciplinary reasons. If there is a dispute as to whether the reason for a transfer or increment withholding is predominately disciplinary, the New Jersey Public Employment Relations Commission will make the determination.

This bill is not to be construed as detracting from the rights of those covered or as detracting from the rights of other employees not covered by this bill.

The committee amendments provide the following:

1. That an employer may assign qualified teachers from within the district for extracurricular activities if it is not possible to locate a qualified person from outside of the district;

2. That suspensions with pay pursuant to N.J.S.18A:6-8.3 and N.J.S.18A:25-6 and reprimands not be regarded as "minor discipline" for the purposes of the bill;

3. That an employer be permitted to use whatever disciplinary sanctions are authorized by law in cases where there is no negotiated agreement regarding minor discipline; and

4. That the negotiated grievance procedure which applies to reprimands must provide for binding arbitration as the final step in the procedure.

34:13A-23. Extracurricular activities as mandatory subjects for collective negotiations

All aspects of assignment to retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the

employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.
L.1989, c. 269, § 2, eff. Jan. 4, 1990.

34:13A-24. Authority of employer to impose minor discipline on employees

a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law.

b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.

c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S. 18A:6-10.
L.1989, c. 269, § 3, eff. Jan. 4, 1990.

34:13A-25. Transfers between work sites not mandatorily negotiable

Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.
L.1989, c. 269, § 4, eff. Jan. 4, 1990.

34:13A-26. Withholding of employee's increment for predominately disciplinary reasons

Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary rea-

sons shall be subject to the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.[1]

L.1989, c. 269, § 5, eff. Jan. 4, 1990.

[1] Section 34:13A-29.

34:13A-27. Dispute whether transfer between work sites or withholding increment is predominately disciplinary; determination by commission; appeal

a. If there is a dispute as to whether a transfer of an employee between work sites or withholding of an increment of a teaching staff member is disciplinary, the commission shall determine whether the basis for the transfer or withholding is predominately disciplinary.

b. If the commission determines that the basis for a transfer is predominately disciplinary, the commission shall have the authority to take reasonable action to effectuate the purposes of this act.

c. If the commission determines that the basis for an increment withholding is predominately disciplinary, the dispute shall be resolved through the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.[1]

d. If a dispute involving the reason for the withholding of a teaching staff member's increment is submitted to the commission pursuant to subsection a. of this section, and the commission determines that the reason for the increment withholding relates predominately to the evaluation of a teaching staff member's teaching performance, the teaching staff member may file a petition of appeal pursuant to N.J.S. 18A:6-9 and N.J.S. 18A:29-14, and the petition shall be deemed to be timely if filed within 90 days of notice of the commission's decision, or of the final judicial decision in any appeal from the decision of the commission, whichever date is later.

L.1989, c. 269, § 6, eff. Jan. 4, 1990.

34:13A-28. Construction of act to provide additional rights

Nothing in this act shall be deemed to restrict or limit any right established or provided by section 7 of P.L.1968, c. 303

(C. 34:13A-5.3); this act shall be construed as providing additional rights in addition to and supplementing the rights provided by that section.
L.1989, c. 269, § 7, eff. Jan. 4, 1990.

34:13A-29. Grievance procedures; binding arbitration as terminal step; burden of proof

a. The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L.1968, c. 303 (C. 34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act.

b. In any grievance procedure negotiated pursuant to this act, the burden of proof shall be on the employer covered by this act seeking to impose discipline as that term is defined in this act.
L.1989, c. 269, § 8, eff. Jan. 4, 1990.

(2)

No. 99-1758

JUN 05 2000

IN THE

Supreme Court of the United States

DELAWARE RIVER PORT AUTHORITY,
Petitioner,

v.

FRATERNAL ORDER OF POLICE,
PENN-JERSEY LODGE 30, AND JOSEPH VENA,
Respondents.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF OF FRATERNAL ORDER OF POLICE, PENN-JERSEY LODGE 30 and JOSEPH VENA IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

Should this Court grant Certiorari to determine whether complementary and substantially similar public sector labor legislation enacted by states which are parties to an interstate compact may be applied to a bi-state agency formed by the compact, when the compact itself provides that additional duties may be imposed upon the agency if both states pass laws having a "substantially similar effect"? Specifically, should the Court address this question in a case in which the Appellate Division of the New Jersey Superior Court applied a settled principle of construction of bi-state compacts shared by the agency's creator states, that conflicts with neither the decisions of this nor other federal or state Courts, and on which the New Jersey Supreme Court recently relied in a decision this Court declined to review or disturb?

Moreover, should this Court review a unanimous and self-described "arguably interlocutory" decision of a state intermediate appellate court, holding only that the parallel labor policies of New Jersey and Pennsylvania that provide police officers with the right to negotiate collectively and which employ mandatory interest arbitration, rather than strikes, to settle unresolved issues, should be applied to a bi-state agency of New Jersey and Pennsylvania?

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COUNTERSTATEMENT OF THE CASE

For the second time in less than three years, petitioner Delaware River Port Authority ("DRPA") urges this Court's review of a routine application of settled state law principles shared by the creator states to interpret a bi-state compact.[1] Petitioner here presents no reason for the Court to accord this application any different treatment than that provided to Petition No. 97-81. The Petition for a Writ of Certiorari should be denied.

A. The Delaware River Port Authority and the Fraternal Order of Police Penn-Jersey Lodge 30

The powers of the DRPA are framed by its congressionally approved Compact. As petitioner concedes, the Compact expressly provides that these powers are subject to amendment "from time to time by the action of either state concurred in by legislation of the other." Pet. at 5;(A-73a).[2] The imposition of additional powers or responsibilities upon the DRPA occurs either when the states agree explicitly to amend the language of the Compact itself, or when one creator state passes legislation that becomes applicable to the DRPA when the other state enacts "legislation having a substantially similar effect." *See, e.g., N.J.S.A.* § 32:4-6, "Historical and Statutory Notes"; 36 P.S. § 3504.1a "Historical and Statutory Notes".[3]

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[1] In No. 97-81, *The Delaware River and Bay Authority v. International Union of Operating Engineers Local 68, et al.*, the petitioner filed an *amicus* brief in support of a Petition for a Writ of Certiorari to the New Jersey Supreme Court filed by The Delaware River and Bay Authority, which advanced the same arguments as those contained in the current application. This petition was denied. 522 U.S. 861 (1997).

[2] Petitioner's Appendix is referred to as (A-) followed by the relevant page numbers(s).

[3] The Compact further and repeatedly provides that legislation passed in one compact state shall become effective and applicable to the DRPA

The DRPA employs seventy-eight police officers who, pursuant to the terms of the Compact, enjoy "all the powers...and all the immunities conferred by law on police officers or municipal police officers in...the State of New Jersey and the Commonwealth of Pennsylvania." (A-2a); *N.J.S.A.* § 32:4-6; 36 P.S. § 3504.1a. DRPA police officers patrol in both New Jersey and Pennsylvania, enforce the laws of each state to protect DRPA property and the over 50 million people who annually transverse the DRPA's interstate bridge facilities, and face the same dangers as their brethren patrol officers working for municipalities in New Jersey and Pennsylvania. (A-5a); Pet. at 4.

For over 20 years, the DRPA recognized respondent, Fraternal Order of Police Penn-Jersey Lodge 30 ("Lodge 30" or "the Union") as the exclusive bargaining representative of the DRPA patrol officers, and engaged in good faith collective negotiations with the Union to jointly craft the terms of the officers' employment. (A-2a). In 1996, however, despite protestations from Lodge 30, the DRPA ceased negotiations and unilaterally imposed working conditions upon the DRPA police. *Id.* The underlying lawsuit ensued, with Lodge 30 asking the court to require the DRPA to return to the bargaining table, to appoint a mediator, and to effect "such further relief" as the court might "deem[]necessary."*Id.*

B. The Proceedings Below

After the trial court denied petitioner's Motion for Summary Judgment, respondents moved for an order "requiring the parties to negotiate an impasse resolution procedure featuring interest arbitration under court supervision," arguing that New Jersey and Pennsylvania both

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upon the "passage...of a substantially similar act," or "the enactment of similar legislation," or of "legislation substantially similar" by the other compact state. *N.J.S.A.* §§ 32:3-2; 32:3-3; 32:3-4a.

provided such a mechanism for settling contract disputes between their public police and public employers. (A-3a). The trial judge adopted the expert opinion of University of Pennsylvania Law School Professor Clyde W. Summers, who opined that interest arbitration in such a setting "was appropriate and desirable" and that the DRPA's creator states' legislative enactments in this regard "were 'substantially the same.'" *Id.* The trial court also conducted "an independent review of each statutory scheme" and made "an independent determination of the[ir] complementary and parallel nature." (A-4a., n.3). Although he concluded he possessed the equitable authority to do so, the trial judge did not order the parties to proceed to interest arbitration; he instead required them to attempt to voluntarily craft a system to resolve their contractual dispute. (A-5a). If this failed, the court stated, it would "order binding interest arbitration" to resolve the matter. *Id.*

Although final relief had not been ordered, the court certified its order as final for purposes of appellate review and petitioner appealed to the New Jersey Superior Court, Appellate Division. (A-21a). A three judge panel unanimously affirmed. (A-1a). Parenthetically noting that the appeal was arguably "interlocutory because the parties have not been ordered to submit their dispute to public interest arbitration" (A-7a, n.4), the Appellate Division found the trial judge's ruling consistent with the doctrine of "parallel and complementary state legislation," a well-established rule of law used to interpret interstate compacts that had been embraced by New Jersey and Pennsylvania courts since 1965, and recently and resoundingly reaffirmed by the New Jersey Supreme Court. *International Union of Operating Engineers, Local 68 v. Delaware River and Bay Authority,* 147 N.J. 433, *cert. denied,* 522 U.S. 361 (1997). ("Local 68"). (*See* A-9a - 12a).

Because the Appellate Division's decision was unanimous, the DRPA sought Certification of Judgment from the New Jersey Supreme Court. This Petition was denied. (A-22a). The DRPA thereupon filed the instant Petition for a Writ of Certiorari with this Court. Currently, the parties are back before the trial court to determine whether they will be ordered to proceed to interest arbitration at this time.

REASONS FOR DENYING THE WRIT

I. THE APPELLATE DIVISION PROPERLY APPLIED LONG-SETTLED AND CONSISTENT PRINCIPLES OF NEW JERSEY AND PENNSYLVANIA LAW IN INTERPRETING THE DRPA COMPACT, AND THERE IS NO REASON FOR THIS COURT TO DISTURB THIS RULING.

This Court's rules caution that a "petition for a Writ of Certiorari is rarely granted when the asserted error consists of...the misapplication of a properly stated rule of law." Sup.Ct.R. 10. At bottom, petitioner's assault upon the decision below consists entirely of the unsupportable claim that the Appellate Division "departed from 75 years of bi-state compact jurisprudence" when it found that the labor laws of New Jersey and Pennsylvania providing for interest arbitration to resolve contract disputes between public police and their employees constituted "complementary state legislation" which, under the terms of the DRPA Compact, was therefore applicable to the bi-state agency. Such a contention, besides being an utter misstatement of law, is facially insufficient to warrant the exercise of this Court's discretionary review, because the Appellate Division below correctly stated the applicable rule of compact interpretation.

Although the interpretation of a compact "presents a federal question," *Petty v. Tennessee-Missouri Bridge Comm'n.*, 359 U.S. 275, 278 (1959), "(t)he legal

consequences of the terms of a compact are not, as a generalized proposition, for the originating construction of this Court." *Id.*, at 284 (Frankfurter, J., dissenting). Rather, this Court "show[s] deference to state law in construing a compact." *Petty, supra*, 359 U.S. at 278, n.4. *See, e.g., Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 46 (1994) (noting that nothing in "the laws of either state" supports assumption that creator states are responsible under terms of compact for debts of bi-state agency); *Delaware River Joint Toll Bridge Comm'n. v. Colburn*, 310 U.S. 419, 432 (1940) (finding bi-state agency of New Jersey and Pennsylvania not liable for consequential damages under compact, as "the settled law" of each state prohibits recovery of such damages).

Contrary to the hyperbolic claim of petitioner, the court below applied a doctrine of compact construction -- the principle that substantially similar state legislation can be applied to a bi-state agency -- that has been an established staple of New Jersey and Pennsylvania jurisprudence for over three decades.

Beginning with *Delaware River and Bay Authority v. International Org. of Masters, Mates and Pilots*, 45 N.J. 138 (1965), continuing with *Eastern Paralyzed Veterans Ass'n v. Camden (EPVA)*, 111 N.J. 389 (1988), *Ampro Fisheries, Inc. v. Yaskin*, 127 N.J. 601, *cert. denied*, 506 U.S. 952 (1994), *Bunk v. Port Authority of New York and New Jersey*, 144 N.J. 176 (1996), *Textar Painting Corp. v. DRPA*, 246 N.J. Super. 251 (Law Div. 1996), and culminating with *Operating Engineers Local 68, supra*, New Jersey courts have consistently applied the doctrine of "parallelism" to various bi-state compact agencies, including petitioner. Under this principle, a single state may not unilaterally impose its will on a bi-state agency, but the creator states together may subject the agency to complementary or parallel state legislation. *Local 68*, 147 N.J. at 447; *Bunk*, 144 N.J. at 185;

EPVA, 111 N.J. 401. Such legislative enactments need not be "identical" to be given parallel effect; all that is necessary is that the laws be "substantially similar," *EPVA, supra,* or even "somewhat similar", if they espouse a "central" or "dominant theme" in the respective public policies of the states. *Bunk, supra.* Finally, there is no need for the laws to specifically provide that they apply to a bi-state agency; all that is required by courts is "some showing of agreement in the laws involving and regulating a bi-state agency." *Local 68*, 147 N.J. at 445; *Masters, Mates and Pilots, supra, Bunk, supra,* 144 N.J. at 189.

Local 68, supra, a decision relied upon by the court below, features a pattern of fact and law that nearly mirrors the instant case. There, as here, a labor organization representing employees of a bi-state agency (in that case, The Delaware River and Bay Authority ("DRBA"), formed pursuant to an interstate compact between New Jersey and Delaware) sought judicial recognition of its members' rights to organize and negotiate collectively, arguing that the labor law policies of the agency's creator states, as reflected in respective state labor statutes, provided public employees with such rights. There, as here, the agency's governing compact featured a provision empowering it to "fix and determine" the "compensation...and all other conditions and terms of employment" of its employees, along with a clause specifying that the agency may be subject to obligations other than those articulated in the compact if authorized under "the law of both states." 147 N.J. at 438, 446.[4]

Broadly canvassing the respective state laws, the New Jersey Supreme Court held that the statutes, "although not

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[4] "Implicit in that provision," held the New Jersey Supreme Court, "is the premise that the two states may subject the DRBA to complementary or parallel legislation." *Operating Engineers Local 68 v. The Delaware River and Bay Authority*, 147 N.J. 433, 446, *cert. denied*, 522 U.S. 861 (1997).

identical, are complementary and parallel. As a matter of public policy, the legislatures of both states have concluded that public employees should have the right of collective negotiation and that employers should not interfere with that right." *Id.*, at 447. "In effect", the court concluded, "the legislatures have modified the Compact." *Id.* Explaining its reasoning further, the *Local 68* court stated:

> ...we merely recognize that the New Jersey and Delaware legislatures have adopted a *substantially similar policy* concerning collective negotiations by public employees. *Anomalous indeed would be the failure to apply so important a policy to an entity created by both states for their mutual benefit.*

Id., (emphasis added).

The *Local 68* court thus confirmed that the labor codes of two creator states which are "not identical", but which nevertheless are "complementary and parallel", in that they express, "[a]s a matter of public policy", a shared legislative intent to provide certain classes of public employees with certain labor rights, should be applied to employees of a bi-state agency. 147 N.J. at 447.

Despite Petitioner's completely erroneous protestations to the contrary, Pennsylvania courts likewise have entirely adopted the principles of parallelism. In *Nardi v. Delaware River Port Authority*, 490 A.2d 949 (Pa. Cmwlth. 1985), the Pennsylvania Commonwealth Court held that its state's police disability statute did not cover DRPA police officers, but only because New Jersey's assertedly equivalent law was "*not* substantially similar." 490 A.2d at 952. Indeed, the court in *Nardi* emphasized that "*identical* legislation would [not] be required" to render the law applicable to the bi-state agency, *Id.* at n.10, and invited the New Jersey legislature to "amend *its statute* to reflect agreement with the clearly stated

intention of the Pennsylvania legislature." *Id.* at n.11 (emphasis added).[5]

Thus, well before the Appellate Division applied what petitioner terms "the implied amendment" rule in the case below, courts in the two compact states had fully and routinely embraced this doctrine. The decision below is therefore not, as petitioner intones, the product of a "new and radical technique" of judicial interpretation, but a rather mundane application of settled principles of compact construction shared by the creator states and undeserving of this Court's attention.

II. THE DECISION BELOW DOES NOT CONFLICT WITH DECISIONS OF OTHER STATE OR LOWER FEDERAL COURTS

This Court deems it "very important that [it] be consistent in not granting the Writ of Certiorari except in cases...where there is a real and embarrassing conflict of opinion and authority" between lower courts. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 79 (1955). Petitioner boldly asserts that New Jersey's application of parallelism to bi-state compact interpretation conflicts with the jurisprudence of Pennsylvania, Delaware, New York, and with applicable federal court decisions. Once again, petitioner's contention is grounded upon a profound misstatement of the case law.

As already demonstrated *supra*, Pennsylvania's interpretation of the DRPA compact is completely congruent with New Jersey's. *See Nardi, supra, Delaware River Port Authority v. Ethics Comm'n., supra*, 585 A.2d at 588.

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[5] Following *Nardi*, the Pennsylvania courts have expressly declared that the DRPA "do[es] not exist in a vacuum and [is] not immune from regulation. Such regulation can take several forms. First, the member states can pass substantially similar legislation, as contemplated by the compact." *Delaware River Port Authority v. Ethics Comm'n.*, 585 A.2d 587, 588 (Pa. Cmwlth. 1991).

Petitioner's claim that Pennsylvania "requires precise evidence of *agreement* between the states on the application of specific statutory measures," to the Compact, Pet. at 17, (emphasis in original) is not supported by citation to any Pennsylvania authority. Petitioner simply cannot escape the signal fact that the DRPA's creator states equally endorse and embrace the applicability of "substantially similar" legislation to the DRPA.

Contrary to the DRPA's contention, Delaware courts are also entirely in accord with the concept of parallel legislation, as noted in *Local 68, supra*, 147 N.J. at 446, *citing Delaware River and Bay Authority v. Carello*, 43 Del.Ch. 213, 222 A.2d 794, 797 (1966)("The Delaware courts follow a similar practice" endorsing the imposition of additional duties upon a bi-state agency if both creator states feature legislation "of a similar nature"). Similarly, petitioner's assertion that "[e]very lower federal court that has considered" the doctrine of parallel legislation "has rejected it," relies upon an erroneous reading of a single, unpublished federal decision, *Pilla v. Delaware River Port Authority*, 1999 WL 45918 (Newcomer, J.) (E.D.Pa. May 7, 1999).[6] The DRPA fails, however, to mention *Moore v. Delaware River Port Authority*, 80 F.Supp 2d 264 (D.N.J. 1999), where the federal court held that the DRPA may be subject to legal duties beyond those specified in the Compact if "the applicable...law of New Jersey is 'substantially similar in nature' to that of Pennsylvania." 80 F.Supp. 2d at 269.

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[6] In *Pilla*, the federal court actually acknowledged that the DRPA is subject to the imposition of additional duties if its creator states feature "complimentary or parallel state legislation." 1999 WL 345918 at *3. The court simply held that the specific differences in the respective state anti-discrimination statutes were so significant that the two laws were "not complementary and parallel, and therefore [could] not be constitutionally applied to the DRPA." *Id.* at *4.

Petitioner's contention that Washington state courts and the Ninth Circuit Court of Appeals reject the doctrine of parallel legislation likewise finds no support whatever in the cases cited. In *Salmon for All v. Department of Fisheries*, 821 P.2d 1211 (Wash. 1992) (en banc), for example, there was no attempt to apply bi-lateral state laws to an interstate agency; the plaintiff there argued that Washington law *unilaterally* bound the proceedings of a Washington-Oregon bi-state agency, without referencing Oregon law. The theory of complementary legislation was not even mentioned, much less advanced as a basis for the plaintiff's claim. *See also Klickitat County v. State*, 862 P.2d 629 (Wash. Ct. App. 1993) (issue only whether Washington law applied to Washington-Oregon interstate agency; no discussion of whether Oregon had similar law). Similarly, in *Seattle Master Builders Ass'n v. Pacific Northwest Electrical Power and Conservation Planning Council*, 786 F.2d 1359 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987), the plaintiff unsuccessfully argued that the environmental laws of Montana and Washington should be applicable to a *multi*-state compact, composed of those two sovereigns *as well as* Oregon and Idaho. 786 F.2d at 1362, 1370-71. There was no contention that the latter two states likewise featured such legislation, and the doctrine of parallelism was never raised.[7]

The decision below plainly does not conflict, in any conceivable manner, with *any* of these cases. Indeed, for all petitioner's efforts to portray the principle of complementary legislation as a renegade legal doctrine, the only case that

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[7] Significantly, the petitioner fails to cite a decision from another jurisdiction, *Redbird Engineering Sales, Inc. v. Bi-State Development Agency of Missouri-Illinois Metropolitan District, et al.*, 806 S.W. 2d 695 (Mo. App. Ct. 1991) which, quoting the New Jersey Supreme Court's *EPVA* decision, fully adopted and applied the doctrine of complementary state legislation to a Missouri-Illinois bi-state compact. 806 S.W. 2d at 701-702.

arguably displays displeasure with this theory is *Malverty v. Waterfront Comm'n. of New York Harbor*, 524 N.E.2d 421 (N.Y. 1988). That decision, however, contains distinguishing elements that make its "conflict" with the New Jersey courts far less than petitioner posits, and does not, in the context of our federal system, warrant this Court's exercise of its certiorari jurisdiction.

In *Malverty*, the New York court's ostensible rejection of the doctrine of complementary legislation appears in *dicta*: the appellant there contended that New York law applied *unilaterally* to the Waterfront Commission, a bi-state agency of New York and New Jersey. More importantly, *Malverty* was premised upon a unique practice of the New York legislature. As the court noted, that body, unlike New Jersey's and Pennsylvania's, "expressly stated that certain legislation" was meant specifically to govern the Waterfront Commission when it enacted law, and in the absence of such definitive legislative expression, no statute was deemed applicable to that compact. *Id.* at 422. *Malverty* is simply an acknowledgment of a discrete legislative determination regarding how obligations are to be imposed on entities established by compacts between New York and other states; it does not conflict with New Jersey and Pennsylvania's shared view that *their* bi-state compacts may be subject to parallel legislation, even if such laws do not necessarily state that they are applicable to such entities.

Grounded in the New York legislature's particular approach to amending a bi-state compact, *Malverty* hardly heralds a reason to grant this Writ; instead, the case demonstrates the wisdom of this Court staying its hand. Petitioner assumes a need for this Court to craft a uniform federal approach to interpreting the terms and conditions of each discrete interstate compact. Putting aside the now demonstrated fact that the vast weight of judicial authority supports the means of construction employed by the court

below, petitioner's argument ignores the essential fact that interstate compacts are created primarily to effectuate and foster local interests. As individual creations of the creator states, compacts are ill-suited to uniform principles of legal construction beyond those applied by the courts of the respective compact states. *State ex rel Dyer v. Sims,* 341 U.S. 22, 27 (1951) ("inherent limitations upon this Court's ability to deal with multifarious local problems" encountered in construing interstate compacts "have inhibited the formulation of a code for dealing with such controversies.") As Justice Frankfurter observed in *Petty, supra,*

> Since a Compact comes into being through an Act of Congress, its construction gives rise to a federal question....But a federal question does not require a federal answer by way of a blanket, nationwide substantive doctrine where essentially local interests are at stake....[T]he meaning parties attribute to the words governs the obligations assumed in the agreement....[T]he language they employed in the Compact, not modified by Congress, should be limited to the legal significance that these States have placed upon such language, not to avoid the obligations they undertook, but to enforce the meaning of conventional language used in their law.

359 U.S. at 285 (Frankfurter, J., dissenting) (citations omitted).

It is thus simply not material what construction the New York courts may put upon the Waterfront Commission Compact; what matters here are the rules of law employed by the courts of New Jersey and Pennsylvania to interpret the DRPA Compact. And these are entirely consistent: both creator states attribute the same meaning "to the words govern[ing] the obligations assumed in the agreement"; both have held that complementary expressions of policy, enacted by their respective legislatures, are applicable to the bi-state agency they have formed, with the consent of Congress.

Indeed, in the many years during which the courts of each state have applied parallel legislation to bi-state agencies without requiring explicit amendment of the compact, the respective legislatures have voiced no disapproval of such judicial interpretation. Where the legislatures of the creator states have not disturbed the actions of their courts, those actions need not be reviewed by this Court.

III. THE DECISION BELOW DOES NOT CONFLICT WITH THE DRPA COMPACT, AND HENCE DOES NOT VIOLATE THE SUPREMACY CLAUSE

Since a congressionally approved compact is, "after all, a contract" between its signatory states, *Texas v. New Mexico*, 482 U.S. 124, 128 (1987), it is subject to "the ordinary rule" of contract interpretation "that all provisions of a compact must be read together in a meaningful manner." *Oklahoma v. New Mexico*, 501 U.S. 239, 245 (1991) (Rehnquist, C.J., concurring in part and dissenting in part). The decision below does precisely that. Faithful to the New Jersey Supreme Court's treatment in *Local 68, supra,* of near identical language contained in the Delaware River and Bay Authority Compact, *See* 147 N.J. at 446, the lower court held that the petitioner's generalized power to "fix and determine" wages and working conditions as set forth in the Compact was modified by the express amendatory clause, which allows for additional obligations to be imposed upon the DRPA if the creator states each enact legislation having a "substantially similar effect." (A-73a); *N.J.S.A.* § 32:4-6 "Historical and Statutory Notes"; 36 P.S. § 3504.1a "Historical and Statutory Notes." Finding that New Jersey's and Pennsylvania's interest arbitration statutes for police officers were "complementary and parallel", the court below held that they "imposed" upon the petitioner the duty to "mediate and, if necessary, submit to public interest arbitration its contract dispute with Lodge 30." (A-14a, 15a).

Premised upon a reading of the entire Compact, the decision below is wholly consistent not only with relevant state law, but also this Court's teachings. *Oklahoma v. New Mexico, supra*, 501 U.S. at 245. It therefore does no violence to the Supremacy Clause.

IV. THE DECISION BELOW IS "ARGUABLY INTERLOCUTORY" AND THUS NOT FIT FOR THIS COURT'S REVIEW

As the Appellate Division emphasized, the trial court has *not yet* ordered the parties to proceed to interest arbitration; indeed, at the hearing on Lodge 30's Motion, the trial judge mused, "at this juncture, we don't even know whether there will be interest arbitration." (A-6a). The court below thus conceded that the ruling was at least arguably "interlocutory", but proceeded to pass on the merits to provide "guidance to the parties involved in this dispute." *Id.* at 7a, n.4.

Even when it is "treated as settling 'the law of the case' so as to furnish the rule of the guidance" for the litigants, the interlocutory nature of a decision is "a fact that of itself alone furnishe[s] sufficient ground for the denial of the application" for certiorari. *Hamilton-Brown Shoe Company v. Wolf Brothers and Co.*, 240 U.S. 251, 258 (1916). Here, all the New Jersey courts have done thus far is to order the parties to attempt to mediate their dispute and, "*if necessary*, submit [it] to public interest arbitration." (A-15a) (emphasis added). Even if this Court believed it should opine on such minutia as whether "the issue of subcontracting [will] be a proper subject of arbitration," between the litigants in this matter, Pet. at 23, such issues are simply not ripe for this Court's consideration, a fact that alone provides abundant reason to deny the Writ.

CONCLUSION

For all the above stated reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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IN THE
Supreme Court of the United States

DELAWARE RIVER PORT AUTHORITY,
Petitioner,

v.

FRATERNAL ORDER OF POLICE
PENN-JERSEY LODGE 30, AND JOSEPH VENA,
Respondents.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey Appellate Division

BRIEF *AMICUS CURIAE* OF THE DELAWARE RIVER AND BAY AUTHORITY IN SUPPORT OF PETITIONER

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On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF *AMICUS CURIAE* OF THE DELAWARE RIVER AND BAY AUTHORITY IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICUS CURIAE* THE DELAWARE RIVER AND BAY AUTHORITY[1]

The Delaware River and Bay Authority ("DRBA"), like the Delaware River Port Authority ("DRPA"), is the creature of a compact entered into by two states, by and with the consent

[1] Counsel for both the Petitioner and Respondents have consented to the filing of this brief. Letters of consent will be filed with the Clerk of the Supreme Court simultaneously with the filing of this brief. Counsel for the Delaware River and Bay Authority authored this brief in whole and no person or entity, other than the Delaware River and Bay Authority and its counsel, made a monetary contribution to the preparation or submission of this brief.

of Congress as required by Article I, Section 10, Clause 3 of the Constitution (the "Compact Clause"). In 1961, in order to facilitate interstate transportation across the Delaware River and Bay and promote economic growth, Delaware and New Jersey formed a Compact and enacted virtually identical enabling legislation to create the DRBA. *See* Del. Code Ann. tit. 17, § 1701 *et seq.*; N.J. Stat. Ann. § 32:11E-1 *et seq.* Congress formally gave its consent to the Compact a year later when it passed a Joint Resolution which incorporated the terms of the Compact and thereby established the DRBA as "as an agency of government" of both states and empowered it with the "essential government functions" necessary to effectuate the purposes of the Compact. H.R.J. Res. 783, Pub. L. No. 87-678, 76 Stat. 560 (1962). In 1990, Congress approved amendments to the Compact that expanded the DRBA's authority to undertake certain economic development projects. *See* H.R.J. Res. 657, Pub. L. No. 101-565, 104 Stat. 2784 (1990); 67 Laws of Del., ch. 252; 192 Laws of NJ, ch. 192.

The DRBA today employs more than 500 people in New Jersey and Delaware. Its facilities include the Delaware Memorial Twin Bridges, four airports, two passenger ferry terminals, berthing docks, five ferries, a business center, and administrative buildings. Each year, more than 15 million vehicles cross the Delaware Memorial Twin Bridges and almost 1.3 million passengers ride on the ferry service operated by the DRBA between Cape May, New Jersey and Lewes, Delaware. To protect its passengers, facilities, and employees, the DRBA has an accredited police force, with 60 officers and its own police training academy.

The DRBA respectfully urges the Court to grant the DRPA's Petition for a Writ of Certiorari to review the decision of the New Jersey Superior Court's Appellate Division. That decision ignores the explicit and carefully considered provisions of a compact formed by two sovereign

states and approved by Congress and establishes a precedent harmful to all Compact Clause entities with operations in New Jersey.

SUMMARY OF ARGUMENT

The Appellate Division's decision undermines the principles underlying this Court's Compact Clause cases and directly conflicts with the decisions of other federal and state courts, including the courts of Delaware, Pennsylvania, and New York, all of which participate in Compact Clause entities with operations in New Jersey. If allowed to stand, the Appellate Division's decision will subject interstate agencies, like the DRBA, to the prospect of a single state court judge unilaterally imposing on them obligations and duties never agreed to by their creator states and never approved by Congress. That prospect creates enormous confusion and uncertainty as to what laws apply to interstate agencies and has profound and disruptive consequences on the daily operations of those agencies. This Court should therefore grant the petition for a writ of certiorari.

ARGUMENT

I. THE APPELLATE DIVISION'S DECISION UNDERMINES THE PRINCIPLE OF STATE SOVEREIGNTY UNDERLYING THE COMPACT CLAUSE AND EMBODIED IN THE DRPA'S AND DRBA'S COMPACTS

Compact Clause entities play a unique and significant role in resolving regional problems through cooperation by states. In enacting the Compact Clause, "'[t]he framers * * * astutely created a mechanism of legal control over affairs that are projected beyond State lines and yet may not call for, nor be capable of, national treatment.'" *Petty v. Tennessee-Missouri Comm'n*, 359 U.S. 275, 282 n. 7 (1959) (*quoting* Felix M. Frankfurter & James M. Landis, *The Compact Clause of the*

Constitution—A Study in Interstate Adjustments, 34 Yale L.J. 685, 695 (1925)). Fundamental to this "mechanism of legal control" is the principle that a single state cannot regulate or control a Compact Clause entity. This principle animates this Court's Compact Clause decisions. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994) ("bi-state entities created by compact . . . are not subject to unilateral control of any one of the [compact] States"); *id.* at 47 ("no one State can control the course of a Compact Clause entity"); *Northeast Bancorp, Inc. v. Board of Governors*, 472 U.S. 159, 172 (1985) ("classic indicia of a compact are missing" where "each State is free to modify or repeal its law unilaterally"); *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 315 (1990) (Brennan, J. concurring in part and concurring in judgment) ("it is not within the autonomous power of any State to create and regulate an interstate agency"). It is also incorporated as a standard provision in more than 50 interstate compacts approved by Congress. *See* Pet. 5 n. 5. Article VIII of the DRBA Compact, for example, explicitly prevents *either* Delaware or New Jersey from imposing upon the DRBA "additional duties or obligations . . . without authorization by the law of *both* States." (Emphasis added.)

The Appellate Division's decision ignores this fundamental precept. Its holding subjects interstate entities like the DRBA to any number of obligations and duties inferred by a single state court from the "policies" of the compact states which created the entities, even where those putative policies are not specifically made applicable to the interstate entities by the compact states or Congress. That holding directly conflicts with the decisions of the federal and state courts in New York, Pennsylvania, and Delaware, all of which have formed with New Jersey Compact Clause entities. *See Malverty v. Waterfront Comm'n of New York Harbor*, 524 N.E.2d 421, 422 (N.Y. 1988) (recognizing fact that "two [compact] States have evinced the same, or similar, public policy . . . by

enacting similar . . . laws is *not* sufficient . . . to render [a compact] properly amended or supplemented" and refusing to subject Port Authority of New York and New Jersey to states' laws prohibiting employment discrimination against convicted felons) (emphasis added); *Nardi v. Delaware River Port Auth.*, 490 A.2d 949, 950 (Pa. Commw. Ct. 1985) (recognizing that "neither creator state can unilaterally impose additional duties, powers or responsibilities upon the [DRPA]," and refusing to subject DRPA to states' employee disability benefits laws); *Delaware River & Bay Auth. v. Carello*, 222 A.2d 794, 799 (Del. Ch. 1966) (recognizing that "[t]he power over [DRBA] employees thus placed in the hands of the [DRBA] Commissioners may not be impaired or diluted by the unilateral action of one member to the compact" and refusing to subject DRBA to state collective bargaining obligation); *Baron v. Port Auth. of N.Y. & N.J.*, 968 F. Supp. 924, 928-30 (S.D.N.Y. 1997) (recognizing that Compact Clause entities "are not subject to the unilateral control of any one of the [compact] states" and refusing to subject Port Authority of New York and New Jersey to jurisdiction of states' anti-discrimination agencies); *Pilla v. Del. River Port Auth.*, 1999 WL 345918, at *3 (E.D. Pa. May 7, 1999) (rejecting "New Jersey's more permissive view" that court can infer an intent to amend compact from "some showing of agreement in the [compact states'] laws involving and regulating a bi-state agency" and refusing to subject DRPA to states' disability and sexual anti-discrimination laws). The Appellate Division's decision thus contravenes this Court's Compact Clause precedents, directly conflicts with the holdings of other federal and state courts, and undermines the sovereignty principle essential to the existence and utility of Compact Clause entities.

Interstate entities would neither exist nor function properly if a single state could impose unilaterally obligations and duties on and thereby control such entities. Because a state necessarily surrenders a portion of its sovereignty when it

joins an interstate compact, it would not agree to form a compact without a precise delineation in the compact of the areas over which it has yielded its authority and a guarantee that the terms of the compact could not be modified without its consent. "It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States." *West Virginia ex rel. Dyer v. Simes*, 341 U.S. 22, 28 (1951). Simply put, "[a] State cannot be its own ultimate judge in a controversy with a sister State." *Id.*

Consistent with this basic sovereignty principle, this Court has required strict enforcement of the terms of interstate compacts. *See Texas v. New Mexico*, 482 U.S. 124, 128 (1987) (interstate compact "must be construed and applied in accordance with its terms"); *Texas v. New Mexico*, 462 U.S. 554 (1983) ("no court may order relief inconsistent with [an interstate compact's] express terms"); *Oklahoma v. New Mexico*, 501 U.S. 221, 245 (1991) (Rehnquist, C.J., joined by O'Connor, Scalia, and Kennedy, J.J., concurring in part and dissenting in part) ("where the terms of the compact are unambiguous, this Court must give effect to the express mandates of the signatory States"). As noted above, cognizant of this Court's precedents, states have uniformly insisted that their compacts contain provisions which require the consent of all of the compacting states to modify the terms of a compact. *See* Pet. 5 n.5. The states have also carefully structured their compacts to account fully for their interests in any action taken pursuant to the compacts. Under the terms of the DRBA's Compact, for example, twelve commissioners, six selected by each State, govern the DRBA. *See* DRBA Compact art. V; Del. Code Ann. tit. 17, §§ 1701, 1711, 1714; N.J. Stat. Ann. §§ 32:11E-1, 32:11E-2. Each state may remove the commissioners it appoints. *See* DRBA Compact art. V; Del. Code Ann. tit. 17, §§ 1701, 1716; N.J.

Stat. Ann. §§ 32:11E-1, 32:11E-4. Any action taken by the DRBA must be approved by at least four commissioners from each state and the governor of either state may cancel the vote of any one or more of its own commissioners. DRBA Compact art. VI; Del. Code Ann. tit. 17, §§ 1701, 1720; N.J. Stat. Ann. §§ 32:11E-1, 32:11E-6. Thus, each governor can effectively veto any action taken by the DRBA. These provisions were intended to ensure that neither New Jersey nor Delaware would be in a position to foist its will on the DRBA or the other compact state. The DRPA Compact contains similar provisions to protect and balance the interests of Pennsylvania and New Jersey. *See* Pet. 5.

The Appellate Division's decision to compel a bi-state agency to submit to binding interest arbitration disrupts the carefully balanced structures embodied in the DRPA Compact and the other interstate compacts to which New Jersey is a partner. The DRPA compact explicitly requires the "action of either State concurred in by the legislation of the other" to impose additional powers on the DRPA and it unambiguously reserves to the DRPA commissioners the power to "fix and determine" the terms of their police officers' employment. *See* DRPA Compact art. IV(e) (vesting DRPA commission with power "to . . . employ . . . such agents and employees as it may require . . . and fix and determine their qualifications, duties, and compensation"). The Appellate Division's decision effectively eviscerated these provisions from the DRPA Compact. Citing "policies" it inferred from Pennsylvania and New Jersey statutes, which the court itself conceded had "discrepancies" and were not directly applicable to the DRPA, the Appellate Division transferred the power to establish the employment conditions of DRPA's police officers from the DRPA's commissioners to a court-appointed arbitrator.

Under the reasoning of the Appellate Division, the sovereignty of the compact states and the intent of the those

states to apply particular statutes to a Compact Clause entity are of no moment so long as a single state court discerns a common "public policy" in the states' general legislation. The Appellate Division's holding constitutes an affront to the sovereignty of the states which have formed interstate compacts with New Jersey and threatens the very integrity and viability of all Compact Clause entities with operations in New Jersey. This Court should grant the DRPA's petition to free those entities from "the unilateral control," *see Hess*, 513 U.S. at 42, of New Jersey's courts.

II. THE APPELLATE DIVISION'S DECISION ELIMINATES CONGRESS' CONSTITUTIONALLY-MANDATED ROLE IN THE COMPACT AMENDMENT PROCESS

The Compact Clause permits a state to "enter into any Agreement or Compact with another State," but only with "the consent of Congress." U.S. Const. art. I, § 10, cl. 3. "The requirement of congressional consent is at the heart of the Compact Clause." *Cuyler v. Adams*, 449 U.S. 433, 439 (1981). "By vesting in Congress the power to grant or withhold consent, or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that *Congress* would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority." *Id.* at 439-40 (emphasis added). The Appellate Division's decision ignores Congress' constitutionally-mandated role in the Compact amendment process by permitting a single state court to alter the terms of an interstate compact without the consent of Congress. As a result, this Court, either through the exercise of its certiorari jurisdiction, or, in the case of direct disputes between compact states, its original jurisdiction, now retains the "ultimate supervisory power" over Compact Clause entities with operations in New Jersey.

That result, however, conflicts with *Cuyler* and the explicit text of the Constitution.

The Appellate Division's usurpation of Congressional authority is especially troubling because its decision affects federal, not state, law. "[An] [interstate] compact when approved by Congress becomes a law of the United States." *Texas v. New Mexico*, 482 U.S. at 128. In amending the DRPA's Compact, the New Jersey court has in effect made *federal* law. This anomalous result underscores the impropriety of the Appellate Division's holding. Federal law —Article IV(e) of the DRPA Compact and Article I, § 10, cl. 3 of the U.S. Constitution— establishes a legislative process for amending the DRPA's Compact and imposing additional obligations on the DRPA. For this reason, this Court has recognized that it lacks the power to amend an interstate compact:

> Under the Compact Clause, two States may not conclude an agreement . . . without the consent of the United States Congress. However, once given, congressional consent transforms an interstate compact within this clause into a law of the United States. One consequence of this metamorphosis is that, unless the compact to which Congress has consented is somehow unconstitutional, *no court* may order relief inconsistent with its express terms.

Texas v. New Mexico, 462 U.S. at 564 (internal quotation marks and citations omitted) (emphasis added). Thus, in altering the terms of the DRPA's compact, the Appellate Division exercised a power which this Court has deemed beyond the scope of its own judicial authority, let alone the authority of a state court.

III. THE CONFLICT IN AUTHORITY CAUSED BY THE APPELLATE DIVISION'S RULING WARRANTS RESOLUTION BY THIS COURT

The Appellate Division's ruling has profound implications for the DRPA, the DRBA, and numerous other Compact Clause entities with operations in New Jersey. These interstate agencies now face the prospect that a New Jersey court will unilaterally conclude that they are subject to a host of additional obligations and duties never contemplated by their creator states and never approved by Congress. Moreover, until New Jersey's courts determine which public policies inferred from the creator states' legislative schemes actually give rise to additional obligations and duties, the interstate entities must operate under a cloud of uncertainty. The entities are left guessing what these particular obligations and duties are until a New Jersey court infers them from time to time in the context of an ongoing dispute. Even the general nature of the obligations and duties is unclear. Although the Appellate Division's decision specifically addresses the applicability of a labor relations law to a Compact Clause entity, its reasoning extends to laws and regulations relating to any area of an interstate agency's operations, including public bidding for contracts, workers' safety, anti-discrimination efforts, and environmental issues.

At the end of the day, the Compact Clause entities with operations in New Jersey will be subjected to one set of rules by the New Jersey courts, which are willing to infer new obligations and duties from the policies of compact states, and another set of rules by the courts of either Pennsylvania, Delaware, or New York, all of which refuse to amend compacts by policy implication. Because of the conflict and confusion caused by the Appellate Division's ruling, this Court should grant the petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, *Amicus Curiae*, the Delaware River and Bay Authority, respectfully requests that the Court grant the DRPA's Petition for a Writ of Certiorari.

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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NOTICE OF CONSENT

This brief is filed with the consent of Petitioner and Respondent, by and through their counsel. Originals of the consents have been filed with the Clerk of the Court[1].

STATEMENT OF INTEREST

The Washington Metropolitan Area Transit Authority ("WMATA") is an Interstate Compact Agency founded and bounded by the terms of an Interstate Compact among the Commonwealth of Virginia, the State of Maryland, and the District of Columbia, with the consent of the Congress of the United States. *See Interstate Compact of the Washington Metropolitan Area Transit Authority*, Pub. L. 89-774 (November 6, 1966) at 80 Stat 1324, as amended thereafter from time to time; *see also Hess v. Port Authority of New York*, 513 U.S. 30 (1994) (noting that WMATA is an Interstate Compact Agency within the meaning of the Compact Clause of the United States Constitution, Art. I, Section 10). WMATA employs nearly 9,000 people and is the primary provider of transit services within the Washington, D.C. metropolitan area.

The construction and interpretation of interstate compacts approved by Congress pursuant to the Compact clause is a matter of federal law. *See, e.g., Cuyler v. Adams*, 449 U.S. 435 (1981). The decision of the Court below undermines the settled and uniform interpretation of such Compacts in ways that create substantial mischief that, if allowed to stand, and if adopted by courts outside New Jersey as an acceptable way of interpreting Compacts, would substantially impair that certainty of result and predictability of the law that is essential to the operation, not just of WMATA, but of all

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[1] Counsel for the *amici curiae* authored the brief in its entirety. No person or entity other than the *amicus*, its members or its counsel made a monetary contribution to the preparation or submission of the brief.

Compact agencies throughout the country. For this reason, WMATA has a substantial practical interest that would be significantly impaired in the absence of a grant of certiorari.

SUMMARY OF ARGUMENT

Mindful of this Court's admonition to *amici* to add to and not just repeat the arguments of the parties directly involved in a case (*see Supreme Court Rule 37.1*), WMATA will confine its brief to demonstrating how the ruling below, by departing from settled law, undermines WMATA's operations. We will also show why that decision cannot stand under principles of federalism as old as *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819) and as fresh as the recent decision in *Alden v. Maine*, _U.S._, 144 L. Ed. 2d 636 (1999).

ARGUMENT

I. BY ABRUPTLY DEPARTING FROM SETTLED LAW, THE DECISION BELOW MAY SUBSTANTIALLY IMPAIR THE OPERATIONS OF WMATA AND OTHER INTERSTATE COMPACT AGENCIES.

A. The Structure of the WMATA Compact and Settled Law

The WMATA Compact establishes early on that WMATA is a "common agency" of its signatory parties. *WMATA Compact*, Art. II, Section 2, at D.C. Code Ann. Section 1-2431(2). (Hereinafter the WMATA Compact will be referred to by section number. The whole of the Compact may be found in the D.C. Code, Section 1-2431, with identical versions in the laws of the other signatories.) That phrase has been interpreted to mean that WMATA is both an entity in and of itself whose operations are subject to the powers and limitations of the Compact, and an agency of each of the states and the District of Columbia as well. *See Diven v.*

Amalgamated Transit Union Int'l & Local 689, 38 F. 3d 598, 601 (D.C. Cir. 1994) (for purposes of federal labor law exemption, WMATA is a "political subdivision" of all its signatories); *PEPCO v. State Corporation Commission*, 221 Va. 632 (1980) (WMATA is an agency of Virginia for purposes of Virginia law governing the sale of electricity within the state).

This dual status, as a separate entity governed solely by its Compact and as an agency of the states in areas where the states and the District of Columbia, *by the Compact*, retain the right to govern WMATA's conduct, is inherent in the purpose and structure of all interstate compacts. By their nature, interstate compacts are entered into precisely because the signatories are willing to surrender a modicum of the sovereignty they otherwise retain to accomplish a purpose that has a benefit beyond the borders of their state. In that sense a compact agency like WMATA acts both as a separate entity, and as an entity that is the creature of its individual signatories as expressed by the terms of the Compact. The characterization of such an interstate compact has been variously described by this Court as analagous to a "treaty," *West Virginia ex. rel. Dyer v. Sims*, 341 U.S. 22, 31 (1951) (Frankfurter, J), or to a contract, *Texas v. New Mexico*, 482 U.S. 124 (1987). Until the decision below, no court had ever disputed that: " [it] requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a state . . . can be given final meaning by an organ of one of the contracting states." *West Virginia ex. rel. Dyer v. Sims, supra*, 341 U.S. at 28.

Rather, the ability of a state to change the nature and extent of its delegation of authority to the Compact agency is governed solely, it has always been assumed, by the specific and complete amendment provisions of the Compact itself. In WMATA's case, for instance, its Compact provides that

amendments changing the Compact can only be made only if an amendment specifically amending the Compact is consented to by legislation subject to the concurrence of both the legislatures of the signatories, their executive officers, and the Congress. *See Compact,* Section 84 ("Amendments and supplements to this Title to implement the purposes thereof may be adopted by legislative action concurred in by all of the others. When one Signatory adopts an amendment or supplement to an existing seetion of the Compact, that amendment or supplement shall not be immediately effective, and the previously enacted provision or provisions shall remain in effect in each jurisdiction until the amendment or supplement is approved by the other Signatories and is consented to by Congress."). This solemn requirement has been interpreted historically by WMATA to require that any amendment to the Compact is effective if, and only if, it is adopted *in pari materia* in all respects by each of the jurisdictions and consented to by the Congress. Thus, when recent amendments were proposed to the signatories to change and somewhat expand the police powers delegated by the signatories to WMATA, Virginia and the District of Columbia included a sentence expanding the power of arrest of on-duty Transit Police officers; Maryland rejected this portion of the proposal. The amendments were submitted to Congress and approved without the language objected to by Maryland. *Compare* Pub. L. No. 105-151, 111 Stat 2686 (1997) with 1997 Laws of Maryland, Ch. 699; 1995 Acts of Virginia, Ch. 150; and D.C. Law 11-138 (1996). This interpretation of the nature of the amendment process is consistent with the cases discussed below on the necessity for joint, and not unilateral, amendment of a Compact.

B. The Compact Itself States the Only Way the Compact May be Amended

The reasons for these strict formal requirements for amendment flow both from the nature of the Compact itself,

and from the practical difficulties that would inhere if any other rule, such as the rule proposed by the decision below of "amendment by implication," were adopted.

The argument from the nature of the Compact itself is one of Constitutional dimension. A Compact involves some surrender of state sovereignty to accomplish the common end served by the Compact . Thus, the express provisions of the Compact may in certain respects, indeed important respects, differ from the state law governing the same or similar conduct. The state may by agreement delegate to the Compact agency the power to make internal rules, such as rules governing procurement, labor, or operations, for its own governance, and these rules may differ in major and minor ways from the state's own laws governing its citizens. The Compact itself may specify that state law may govern some activities of the agency that take place within the territory of a single signatory. For instance, the WMATA Compact expressly provides that the laws of the respective signatories shall govern traffic requirements, zoning, and health and safety matters, to the derogation of the Authority's power to act independently. *See Compact*, Section 75. This express retention of authority meets both practical concerns (it would be difficult to imagine an interstate agency that had independent authority to set speed limits, for instance) but is also consistent with the notion that those powers conceded to or delegated to an agency by a Compact are within the province of the Compact agency unless the Compact itself designates local law to govern. Just as importantly, however, the powers not granted directly or by implication to the Compact agency are retained by each signatory. The Compact is a form of limited self-government for the agency; it is not a justification for any state to exercise its own powers in derogation of the sovereignty retained by the other parties. For one sovereign to have a power to regulate, by legislation, court fiat, or otherwise, matters that directly concern the power of the other sovereign parties to the Compact over their

own agencies involves an assertion of the sovereign power of the legislating state beyond its Constitutional power to act under the Tenth Amendment, unless that power has been specifically delegated to the Compact agency.

This theoretical and legal construct has practical significance. If each signatory were given the right to impinge on the sovereignty of the others, even in matters where all sovereigns have addressed the issue in some manner, the agency could never determine with precision whether the legislation of the signatories were congruent enough to amount to an amendment of the Compact by implication. Even if there were some substantial broad congruence, whether and to what extent particular provisions of particular legislation of one signatory applied when the legislation of other signatories was silent or had provisions that differ would vex the sturdiest logician. If God is in the details, so is the Devil. Requiring a Compact agency to choose among the details even of parallel legislation requires the Agency to favor one sovereign at the expense of the other, subject always to the power of the Court of a disfavored sovereign to second-guess the choice. In WMATA's case, potentially three different courts of three different jurisdictions could could pick and choose to apply different provisions of ostensibly parallel legislation that a court of one of the sovereigns had decided on its own authority amended the Compact, even if the courts or the legislatures of the other signatories determined to the contrary. Indeed, even if the courts of only one of the three jurisdictions in which WMATA operates were to adopt the reasoning of the New Jersey court, the result would be either a surrender of amending power solely to the state adopting the New Jersey construction or, more likely, retaliatory decisions by the courts or legislatures of the other parties. Confusion would soon deteriorate to chaos. "What's a body to do?" should not be the governing principle of any law, much less the law governing a body which operates across borders where each

sovereign may have different laws. If courts in the jurisdictions in which WMATA operates were to follow the New Jersey decision here, the result would be not only greatly increased business for lawyers both in and out of house, but paralysis in operations and chaos in the field as workers charged with obeying the law struggled to determine what exactly the law was they were charged to obey. And if different law applied to different jurisdictions, the conflict would have serious repercussions for those who innocently sought to follow some law, any law, in the absence of authoritative interpretations. That is no way to run a railroad or a bus line.

For these reasons, the local courts that have interpreted the WMATA Compact have held that the Compact governs those powers delegated to the Authority by its terms, even if that grant conflicts with state law. It follows, the courts have held, that the only way to amend the Compact is by the terms of the Compact itself: with the knowing, full consent of the Commonwealth of Virginia, Maryland, the District of Columbia and the Congress evidenced by identical legislation adopted by all the signatory parties and consented to by the Congress.

Thus, in *Malone v. WMATA*, 622 F. Supp 1422 (D.C. Va. 1985), an employee of WMATA argued that the Virginia labor law, which contained a right to work provision, continued to govern his substantive right to refuse to join a union shop, notwithstanding that the Compact, itself, contained a provision mandating WMATA to engage in collective bargaining with its unions and, implicitly, to reach agreements that contained union shop clauses. In finding that the Virginia law did not apply, the Court correctly reasoned that insofar as the signatory jurisdictions had entered into the Compact, they had agreed to abide by the terms of the Compact, even if those terms conflicted with state law that would otherwise govern. The Compact was judged para-

mount not only because the Compact as federal law was supreme over the law of the states, but also because the nature of the Compact itself was a bargain that bound the parties by its terms.

In *C.T. Hellmuth & Assoc., Inc. v. WMATA*, 414 F. Supp. 408 (D. Md. 1976), the court considered and rejected the identical argument adopted by the New Jersey court here in recognizing the theory of "implied amendment." There, the plaintiff sought to invoke his alleged statutory rights to freedom of information to obtain documents from WMATA. The Compact did not specifically address the question of freedom of information, although the Compact gave WMATA's Board of Directors clear authority to adopt, repeal and amend rules and regulations governing the operation of the Authority (*Compact*, Section 12 (c)), a power it had not exercised in the case of freedom of information. The plaintiff claimed that an amendment by implication could be construed from the fact that all the signatories had enacted freedom of information laws to govern their own agencies, and, because these laws were "substantially similar," should be treated as implied amendments to the Compact.

This argument was soundly rejected by the court for reasons that echo here. The court noted that a Compact was a "contract which may not be amended, modified, or otherwise altered without the consent of all the parties." *Id. at 409*. If the Compact were to be amended, it would have to be amended by its terms, since even if legislation with parallel subject matter had in fact been enacted by each of the signatories, those pieces of legislation differed in their details. *See Id.* at 410, fn. 5 (cataloguing a number of details in which the legislation of the signatory states differed). The existence of these details, or the possibility that the details might differ, made amendment by implication a dead letter as a matter of law, since "Maryland may not impose its preferences in this regard upon Virginia and the District, for such an imposition,

however minimal, was nonetheless an intrusion upon their interest and in derogation of the Compact." *Id.* at 410.

The *Hellmuth* decision cuts out the logical heart of the decision under examination. Even if a court of a single jurisdiction could predictably determine when and if the signatories had enacted parallel legislation, that would not end the matter of determining the content of the amendment. Each state may act on a similar subject in a similar broad way (i.e., by recognizing a citizen's right to obtain some documents from government). But that similarity breaks down in the details. One state, either by statute or decision, may recognize a particular request as subject to an exemption; another state may not. Faced with such conflict, WMATA, at its peril, would be required to choose which of the signatories' laws will apply. Any choice it makes would be in derogation of the law of one of the other signatories, and subject to examination by the courts of all three jurisdictions that are parties to the Compact. Thus, if WMATA chose to recognize an exemption contained in District law, but not in the law of Virginia, a Virginia court might find the choice invalid, while the District of Columbia courts would presumably uphold the action. Maryland might have an entirely different position. The result would be gridlock in practice, and, as a theoretical matter, would enable WMATA, or the courts of one or all of its signatory jurisdictions, to act in ways contrary to the choices made by the legislatures or the courts of other signatory jurisdictions. Thus, although all the states might recognize a broad right, once that right is reduced to specifics, the possibilities for confusion, contradiction, and insults to the sovereignty of each of the signatories becomes not only likely, but inevitable.

This Court ought to have compelling reasons of constitutional dimension to permit a State to so impinge upon the sovereignty of its co-equal states and to undermine the

law of the United States contained in the Compact. No such reason exists: in fact, the opposite result is compelled by the Tenth Amendment to the Constitution, and by this Court's very recent construction of the architecture of federalism created by the Constitution.

II. State Sovereignty Is an Interest of Constitutional Dimension and Bars Amendments to an Interstate Compact by Implication.

Petitioner here has ably argued the case against the New Jersey court's action in the case at bar. However, there is another argument only touched upon by petitioner that WMATA believes is sufficient in itself to invalidate the action of the intermediate New Jersey state appellate court. That principle is one of the fundamental federalism created by the Constitutional scheme of allocating powers among the States themselves, and between the States and the federal government.

It has been well-established, at least since *M'Culloch v. Maryland,* 17 U.S. (4 Wheat.) 316 (1819), that states may not tax directly the operations of the federal government. The reason for this rule is obvious: if the states were given the power to tax the federal government, that power could be exercised in ways that undermined the fundamental sovereignty of the federal government operating in its own sphere. Although "all powers over which the sovereign power of a state extends are objects of taxation" Justice Marshall held, it was equally true that "those over which the sovereign power of a state does not extend are, upon the soundest principles, exempt." *Id.* at 429. The people of a single state could not extend its power to tax to the federal government without undermining the allocation of sovereignty between the states and the federal government created by ratification of the Constitution.

If *M'Culloch* established the principle that a state could not exercise its law-making powers in ways that invaded the sovereignty of the federal government, recent precedent has established that the right of the states to exercise their retained sovereignty free of federal interference is as real and as constitutionally based as the immunity of the federal government from direct regulation by the states.

These retained sovereignty cases have sometimes arisen under the Tenth Amendment, sometimes under the Eleventh, but whatever the source of the right in the particular case, the right of the states to exercise their sovereignty free of interference by the federal government is of Constitutional dimension. In this case, the Tenth Amendment furnishes the touchstone. That amendment provides that the powers not delegated to the United States by the Constitution are "reserved to the States *respectively* or to the people." *Constitution of the United States, Amendment X.* (emphasis supplied). Those powers that remain with the states and have not been ceded to the federal government by the Constitution are thus retained by the states not only against federal encroachment, but also free from the power of other states to regulate matters solely confined to the sovereignty of a particular state. The attempt by one state to exercise power over another state's governmental affairs in matters within the second state's sovereignty is a corrupt exercise of power barred by the Tenth Amendment. Under that amendment, the powers reserved to each state individually and respectively may neither be interfered with by the federal government nor by the government of any other state, absent an agreement by the state itself to surrender a part of that sovereignty by means of a constitutionally provided for Interstate Compact.

Thus, except where the states have agreed explicitly to confer upon Congress a power by legislation to regulate the conduct of the state itself (e.g., the Fourteenth Amendment, Section 5) or where a state itself has voluntarily waived its

immunity from federal legislation, the State retains its Eleventh Amendment immunity notwithstanding the express efforts of Congress to waive that right for the states. In this case, the whole is not greater than the sum of its parts, because those "parts" have co-equal dignity with the federal government. *See College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Board*, __ U.S.__, 144 L. Ed. 2d 605 (1999).

And, as this Court has recently held, this retention of sovereignty by the states as against the federal government is rooted not only in the explicit provisions of the Tenth and Eleventh Amendments, but in the structure of the Constitution itself. Thus, in *Alden v. Maine*, __U.S.__, 144 L. Ed. 2d 636, (1999), this Court explained why a state government was not subject to suit under the Fair Labor Standards Act in its own courts. While the Eleventh Amendment cases had established that a state could not be subjected to FLSA action in the federal courts, suits in the state courts under federal law did not implicate the Eleventh Amendment, the plaintiff claimed, because that amendment applied only to suits against the state under federal law brought in federal courts. Use of the state court to vindicate the federal right did not, the plaintiff claimed, implicate any right of the state of Constitutional dimension. A majority of this Court rejected that argument.

In finding that suit against the state under federal law was constitutionally barred even if brought in state court, this Court noted that "the States' immunity from suit is a fundamental aspect of the sovereignty which the states enjoyed before the ratification of the Constitution, and which they retain today except as altered by the plan of the Convention or certain Constitutional amendments." That residual sovereignty which was never surrendered to the federal government by the Constitution is "inviolable." 144 L. Ed. 2d at 652. No waiver of that immunity would be

implied; rather, there must be "compelling evidence" that the states had surrendered their sovereign immunity with respect to a suit, whether or not brought under federal law. *Id.* at 663. To permit a citizen to enforce federal law in any court by suit against a state was a violation of the fundamental sovereignty retained by the states at the time of the Constitutional convention and waiver of that retained sovereignty would not be implied. This was so because every waiver carried with it "substantial costs to the autonomy, the decisionmaking ability, and the sovereign capacity of the State." *Id.* at 676. When the federal government attempts to "assert authority" over a "State's most fundamental political processes, it strikes at the heart of political accountability so essential to our liberty and republican form of government." *Id.*

The logic of that decision limiting the power of the federal government to force a waiver of sovereignty on the States leads to the conclusion that the retained sovereignty of each of the States bars attempts to control or regulate the conduct of the state itself by an equal sovereign, another State, at least absent express consent. Although the states may, subject to due process and dormant commerce clause limitations, indirectly regulate the conduct of out-of-state citizens through the exercise of their police power, it certainly does not follow that one sovereign state has the power to regulate the conduct of other states and their agencies. To grant such a power would completely undermine the principle "so essential to our liberty and republican form of government" that only the State itself may regulate its own conduct, or waive its otherwise sovereign rights.

Maine may, for instance, impose its own traffic laws on citizens of Vermont who travel in the state. It may tax, subject to due process limitations, sales that have a locus in the State even if the purchaser is not a citizen of Maine. In short, it may exercise its own sovereignty in ways that may

regulate incidentally citizens of another state. But if Maine sought to compel the state of Vermont to apply Maine's traffic laws within Vermont's borders, or sought to compel the agencies of Vermont to obey Maine's labor laws governing the right of government workers to unionize, or any other law for that matter, then a Constitutional line has been crossed. Extra-territorial application of the laws of a State are always subject to scrutiny, but extra-territorial attempts to regulate the affairs of another state are always forbidden absent compelling evidence of consent, just as state attempts to impose its rules directly on the federal government are forbidden. Such efforts constitute a vile and pernicious interference by one state in the affairs of another, and cannot, after *Alden*, survive challenge.

Yet, such vile and pernicious interference with the sovereignty of Pennsylvania is just what the court of New Jersey did here. By applying New Jersey law to an interstate compact agency it sought to impose New Jersey's will and New Jersey law on an agency of the Commonwealth of Pennsylvania beyond the scope of Pennsylvania's waiver of its own sovereignty when it consented to be bound by the treaty/contract/agreement called a Compact. It does not matter that the law New Jersey seeks to apply because of an "amendment by implication" has some counterpart in Pennsylvania law. Unless Pennsylvania has expressly waived its right to apply its own law to its own agencies, New Jersey cannot act to usurp the sovereignty of Pennsylvania. It is up to Pennsylvania alone to decide the law governing its own agencies unless New Jersey and Pennsylvania's governments have knowingly and solemnly ceded a portion of that sovereignty to a common agency established by Compact by approving the initial Compact, or have knowingly consented to an explicit amendment to that Compact.

Moreover, these interests are real and must be given effect even if the laws of both jurisdictions are similar in all

respects. This is so because any application by one court of the "joint law" of the court's home state and another jurisdiction to an agency of a sister state equally infringes the sovereignty of the other state. A state, as an incident of its own sovereignty, retains the right to interpret its own law in its own way. New Jersey's reading of the same words may differ from the reading a Pennsylvania court might give in a number of ways. One state may adopt an absolute plain meaning rule; the other may look to extrinsic sources to guide interpretation. The standards applied may portend different results even if the language of the two enactments are the same. To borrow Professor Lon Fuller's famous example, one state's notion of a "vehicle" may encompass a baby buggy or a bicycle; the other state's may not.

Similarly, even if the New Jersey court had exercised some restraint and required an absolute congruence of two statutes before an implied amendment of a Compact could be inferred, that rule too would undermine the ability of each of the interested States to amend their own laws. If only identical laws amended a Compact agency by implication, then the effect of an amendment to the law applied by implication would either repeal the law's application to the Compact agency, thereby creating confusion and disorder by the unilateral act of one of the parties to the Compact, or else the unamended law would continue to govern the Compact agency, in derogation of the sovereignty of the amending state. In this area, as the Court stated in another Compact context, "the pertinent inquiry is one of potential, rather than actual impact" on the "sovereignty" of each of the parties to the Compact. *U.S. Steel Corp. v. Multistate Tax Commission*, 432 U.S. 452, 472 (1978).

This analysis is implicit, at least, in all those cases considering the power of a state unilaterally to amend a Compact or to impose its law in the absence of an express provision in the Compact. *See C.T. Hellmuth, supra; Cal*

Tahoe Regional Planning v. Sahara Tahoe Corp., 504 F. Supp. 753, 761 (D. Nev 1980)(California has no power without authorization under the Compact or express consent of Nevada to pass legislation that affects the inner workings of a Compact agency).

We close with the words of Justice Frankfurter, long-time champion of federalism, writing in *West Virginia ex. rel. Dyer v. Sims*, 341 U.S. 22, 28. There, in interpreting the scope of an Interstate Compact, Justice Frankfurter wrote:

> "It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for the State can be unilaterally nullified, or given final meaning, by an organ of one of the contracting states."

By attempting to usurp authority that constitutionally resided in Pennsylvania alone without securing the agreement by Pennsylvania to a common amendment to the Compact, the New Jersey court struck at the heart of federalism in a way that should be overturned without delay. This Court should take this opportunity to vindicate those important principles, particularly where, as here, the aberration produced by the New Jersey court could have deleterious repercussions for all Compact agencies if allowed to spread. This case may, with time, prove to be a derelict, but that is only a hope. If it is a derelict, this Court should sink it now and spare all Compact agencies the agony of dealing with this indefensible usurpation by a single court of the sovereignty of a sister state.

Respectfully submitted,

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OCTOBER TERM, 1999

DELAWARE RIVER PORT AUTHORITY,

Petitioner,

–v.–

FRATERNAL ORDER OF POLICE,
PENN-JERSEY LODGE 30 and JOSEPH VENA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

BRIEF OF *AMICI CURIAE* THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY and THE WATERFRONT COMMISSION OF NEW YORK HARBOR IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF THE *AMICI CURIAE*[1]

The Port Authority of New York and New Jersey ("the Port Authority") is a body corporate and politic created in 1921 by a Congressionally-consented-to compact between the States of New York and New Jersey, pursuant to Article I, Section 10 of the United States Constitution, to develop public transportation, terminal, and other facilities of commerce within the statutorily defined Port District. 42 U.S. Stat. 174 (1921), consenting to 1921 N.J. Laws, Ch. 151 (codified at N.J. Stat. Ann. §§32:1-1 to -24 (West 1998 & Supp. 1998)) and 1921 N.Y. Laws, Ch. 154. (codified at N.Y. Unconsol. Ł. §§6401-6423 (McKinney 1979 & Supp. 1998)).

The Port District comprises an area of approximately 1,500 square miles centering around New York harbor. *See*, N.J. Stat. Ann. §32:1-3 (West 1990); N.Y. Unconsol. L. §§6403 (McKinney 1979). At the present time, pursuant to the 1921 Compact, and subsequent bi-State legislation, the Port Authority owns and operates thirty three (33) such facilities, including two tunnels and four bridges between the States of New York and New Jersey, four airports, a heliport, the World Trade Center, and six marine terminals.

The Waterfront Commission of New York Harbor ("the Waterfront Commission") is a body corporate and politic created in 1953 by a Congressionally-consented-to compact between the States of New York and New Jersey, pursuant to Article I, Section 10 of United States Constitution. 67 U.S. Stat. 541 (1953), consenting to 1953 N.J. Laws, Ch. 202, as amended

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[1] In compliance with Rule 37.2(a), the Court is advised that the parties herein have consented to the submission of a brief *amici curiae* by The Port Authority of New York and New Jersey and The Waterfront Commission of New York Harbor as set forth in letters on file with the Court.

In compliance with Rule 37.6, the Court is advised that this brief *amici curiae* was authored wholly by counsel whose names are set forth hereon, and no monetary contribution was received from any other party in connection with the preparation or submission thereof.

by Ch.203 (codified at N.J. Stat. Ann. §§32:23-1 *et seq.* (West 1990 & Supp. 1998)), and 1953 N.Y. Laws Ch. 882, as amended by Ch. 883 (codified at N.Y. Unconsol. L. §§9801 *et seq.* (McKinney 1979 & Supp. 1998)). The Waterfront Commission was created for the purpose of eliminating racketeering and other criminal, corrupt and evil conditions on the waterfront within the Port District created by the Port Authority legislation. N.J. Stat. Ann. §§32:23-2 to -4, -6[2] (West 1990); N.Y. Unconsol. L. §§9802-3, 9806 (McKinney 1979).

The Port Authority and the Waterfront Commission respectfully urge the Court to grant the Petition for Certiorari of the Delaware River Port Authority ("DRPA") herein to review a decision of the New Jersey Superior Court, Appellate Division, because that decision ignores the carefully considered methods set forth in the DRPA Compact for imposing duties and obligations on that agency, establishes a precedent that conflicts with the decisions of other states and is harmful to other Compact Clause entities by imposing duties and obligations by inference. The rule of decision applied by the Appellate Division decision is inconsistent with the nature of an interstate compact agency, whose conduct should be regulated only when all parent states express an intent to do so. Moreover, the decision creates confusion as to the rule of decision to be followed to determine the effect of state legislation on interstate Compact Clause agencies.

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[2] Reference is made to the first version of N.J. Stat. Ann. §32:23-6 (West 1990). New Jersey Statutes Annotated contain two versions of N.J. Stat. Ann. §32:23-6 (West 1990) and other sections of Waterfront Commission legislation because New York and New Jersey adopted amendatory legislation in 1970 relating to airports, which provided that such legislation would not be effective if not approved by Congress, and Congress has not approved such legislation. See note under N.J. Stat. Ann. §32:23-6 (West 1990). McKinney's Consolidated Laws of New York Annotated presents the Waterfront Commission legislation incorporating the 1970 amendments. Accordingly, hereinafter, unless otherwise specified, citation is made to the first version of a section in New Jersey Statutes Annotated if there are two versions of a section. No parallel citation will be made of a corresponding section in McKinney's Consolidated Laws of New York Annotated if it is set forth therein as amended by the 1970 legislation.

As Compact Clause agencies formed by New Jersey and New York, the *Amici Curiae* have an interest in the resolution of these issues by this Court in a decision that recognizes the contractual nature of interstate compact agencies, and removes confusion as to the applicability of state legislation to them in the absence of express mutual agreement of the parent states providing for such applicability.

STATEMENT OF THE CASE

Amici Curiae adopt the statement of the case as set forth in the Petition submitted by the DRPA.

SUMMARY OF ARGUMENT

This Court should grant the Petition for Writ of *Certiorari* to the Appellate Division of the New Jersey Superior Court because this case presents an issue of federal law under the United States Constitution that has national importance: Whether agencies created by the States pursuant to agreements made pursuant to the Compact Clause may be regulated by the law of one state in absence of mutual concurrence by the other parent state or states that the Compact Clause agency may be so regulated. The Appellate Division has ruled that a Compact Clause agency may be regulated by the law of one state in the absence of mutual concurrence by the other parent state or states. In so ruling, the Appellate Division has ignored the contractual nature of Compact Clause agencies, and their purpose of addressing regional problems without regard to state boundaries, free from individual state control. Thus, the Appellate Division decision, if unchallenged, will reduce the effectiveness of Compact Clause agencies within New Jersey, and elsewhere if the decision is followed as precedent.

In addition, review by this Court of the decision of the Appellate Division is necessary to resolve confusion as to law applicable to interstate compact agencies. First, the rule to determine which state legislation applies to a New Jersey interstate compact agency varies among New Jersey and the

other States who are party to the compacts creating the DRPA and the *Amici Curiae*. Second, the rule followed by the Appellate Division itself engenders confusion as to the law applicable to interstate compact agencies.

REASONS FOR GRANTING THE PETITION

I. THE DETERMINATION OF THE APPELLATE DIVISION THAT AN INTERSTATE COMPACT AGENCY MAY BE REGULATED BY THE LEGISLATION OF ONE PARENT STATE IN THE ABSENCE OF CONCURRENCE BY ALL OTHER PARENT STATES IS CONTRARY TO THE CONTRACTUAL NATURE OF INTERSTATE COMPACT AGENCIES.

This case presents an issue of federal law under the United States Constitution that has national importance since it concerns the circumstances under which a Compact Clause agency may be regulated by the law of one compacting State in the absence of concurrence by the other State or States who are party to the compact. The issue is one which is "the function and duty of the Supreme Court of the Nation" to determine, *State ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951), since it "determine[s] the nature and scope of obligations as between States." *Id.*

The Appellate Division, has ruled that, despite provisions in the DRPA Compact granting authority to its Commissioners to control terms and conditions of the DRPA's employees, subject to gubernatorial veto, N.J. Stat. Ann. §32:3-4 (West Supp. 1999); Pa. Stat. Ann. tit. 36, §3503, Art. III (Supp. 2000), the DRPA must submit labor disputes to binding arbitration under New Jersey law, even though there has been no mutual expression of intent to do so by both New Jersey and Pennsylvania, New Jersey's partner in creating the DRPA. This determination impacts upon the essential nature of Compact Clause entities, as determined by this Court. As set forth more fully herein, this Court has characterized interstate compacts as

binding contracts, and interstate compact agencies as entities created to address issues that transcend state boundaries which are not subject to the unilateral control of one state.

It is respectfully submitted that this Court should review the Appellate Division decision because of the decision's impact on the contractual nature of the DRPA Compact and interstate compacts in general, including those creating the *Amici Curiae*.

A. INTERSTATE COMPACTS ARE CONTRACTUAL IN NATURE AND INTERSTATE COMPACT AGENCIES SHOULD NOT BE REGULATED BY THE LEGISLATION OF ONE PARENT STATE IN THE ABSENCE OF CONCURRENCE BY ALL OTHER PARENT STATES.

In *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. 30 (1994), this Court recognized that bi-state entities are created by interstate compact "to address interests and problems that do not coincide nicely either with the national boundaries or with State lines - interests that may be badly served or not served at all by the ordinary channels of National or State political action." *Id.*, at 40 (internal quotation marks and citation omitted). A hallmark of an interstate compact agency is that it is not subject to the unilateral control of any of its parent states. "It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States . . . can be unilaterally nullified, or given final meaning by an organ of one of the contracting States." *State ex rel. Dyer v. Sims*, *supra*, at 28. "[B]i-state agencies created by compact . . .are not subject to the unilateral control of any one of the States that compose the federal system." *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. at 42. "[N]o one state alone can control the course of a Compact Clause entity." *Id.*, at 47. By creating an interstate compact entity, each compacting state shifts a part of its authority to the jointly created agency. *Id.*, at 42.

In contrast, in the instant case, the Appellate Division did not respect the contractual nature of the DRPA compact. The Appellate Division did not base its decision on a finding that the New Jersey and Pennsylvania had *expressed* a *mutual* intent to alter the relationship between the DRPA and its employees. Rather, the court relied on each state's *respective* policy as to government labor relations *in general*. Appendix, 14a.[3] Neither state statute relied upon refers to the DRPA. Accordingly, it cannot be said that these two laws purport to amend the DRPA's Compact, or overturn or preempt the Compact provision entrusting the DRPA Commissioners with fixing and determining the "qualifications, duties and compensation" of DRPA employees subject to gubernatorial review

B. THE COMPACT LEGISLATION GOVERNING PETITIONER AND *AMICI CURIAE* REQUIRE CONCURRENT LEGISLATION OF THE RESPECTIVE PARENT STATES TO AFFECT PETITIONER AND *AMICI CURIAE*.

The decision of the Appellate Division is inconsistent with the interstate compacts creating DRPA and the *Amici Curiae*, and subsequent legislation of the parent states imposing duties and obligations on those entities, which require legislation by *both* respective parent states for the legislation to be effective.

1. DRPA LEGISLATION

The DRPA is a typical interstate compact agency. The DRPA was created by interstate compact between New Jersey and Pennsylvania to develop, operate and maintain interstate transportation and port facilities that serve the two States. N.J. Stat. Ann. §32:3-1, -2 (West 1990 & Supp. 1999), Pa. Stat. Ann. tit. 36, §3503, Preamble, Art. I (Supp. 2000), to effect the two States' mutual interest in "development of the Delaware river from Camden and Philadelphia to the sea," through " a

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[3] References to "Appendix" followed by page numbers are to the Appendix to the Petition for Certiorari.

single agency of both states empowered to further the interests of both states." N.J. Stat. Ann. §32:3-1 (West 1990); Pa. Stat. Ann. tit. 36, §3503, Preamble (Supp. 2000).

To facilitate the DRPA's interstate mission, the DRPA Compact and bi-state implementing legislation set forth detailed provisions for *bi-state* governance of the DRPA. The Compact and the implementing legislation do not provide for the imposition of obligations by only *one* of the compact states. The DRPA is controlled by sixteen Commissioners, eight from New Jersey and eight from Pennsylvania. N.J. Stat. Ann. §32:3-3 (West Supp. 1999); Pa. Stat. Ann. tit. 36, §3503, Art. II (Supp. 2000). The Commissioners "have charge of the commission's property and affairs . . . , but no action of the Commissioners shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof." N.J. Stat. Ann. §32: 3-4 (West Supp. 1999); Pa. Stat. Ann. tit. 36, §3503, Art. III (Supp. 2000). The DRPA Commissioners are specifically granted the power to "fix and determine" the DRPA's employees' "qualifications, duties and compensation." N.J. Stat. Ann. §32:3-5(e) (West Supp. 1999); Pa. Stat. Ann. tit. 36, §3503, Art. IV, para. (e) (Supp. 2000). The Compact provides that the Governor of the State that appoints a Commissioner may be granted the authority to in effect, "cancel" the Commissioner's vote. N.J. Stat. Ann. §32:3-3 (West 1990); Pa. Stat. Ann. tit. 36, §3503, Art. II (Supp. 2000). No provision of the Compact allows the legislature of either State to impose additional duties or obligations on the DRPA, but "additional powers" may granted to the DRPA by *concurrent* legislation of the two States. N.J. Stat. Ann. §32:3-5 (West Supp. 1998); Pa. Stat. Ann. tit. 36, §3503, Art. IV, follow'g para. (q) (Supp. 2000).

The DRPA Compact and amendatory and supplementary legislation are replete with references to the necessity of concurrent legislation by the sister state before any law imposing duties or obligations on the DRPA is effective or operable. *See*, N.J. Stat. Ann. §32:3-2 to -5, -13, -13.23 (West

Supp. 1999) (historical notes); N.J. Stat. Ann. §32:3-13.41, -13.49 (West 1990); N.J. Stat. Ann. §32:4-6 (West 1990 & Supp. 1999) (historical note); N.J. Stat. Ann. §32:4-9 (West 1990); Pa. Stat. Ann. tit. 36, §3503-3503.9 (Supp. 2000) (historical notes); Pa. Stat. Ann. tit. 36, §3504.1-3504.1a (Supp. 2000) (historical notes).

The Appellate Division's determination ignores the subtle balance of power between the executive and legislative branches of state government embodied in the DRPA Compact, and thus ignores the important public policy of insulating interstate compact agencies from unilateral state legislation inconsistent with the agency's independence from single state legislative control. Indeed, as set forth in the DRPA Compact, protection from unilateral state control is the rationale for creating an interstate compact agency to be able to competently address and solve problems of a regional nature which cross state lines. N.J. Stat. Ann. §32:3-1 (West 1990); Pa. Stat. Ann. tit. 36, §3503, Preamble (Supp. 2000).

2. PORT AUTHORITY LEGISLATION

The *Amici Curiae* similarly were created to serve the mutual interests of the compacting States of New Jersey and New York to address common problems.

The Port Authority was created in recognition of the fact that "the territory in and around the port has become commercially one center or district." N.J. Stat. Ann. §32:1-1 (West 1990); N.Y. Unconsol. L. §6401 (McKinney 1979).

A review of the Port Authority Compact demonstrates that the legislatures of the two States intended that the Port Authority be free from obligations or duties imposed by unilateral state legislation of either state and subject only to concurrent legislation. For instance, Article III provides that the Port Authority

> shall be a body corporate and politic, having the powers of jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon it by the Legislature of either State *concurred in by the Legislature of the other* or by Act or Acts of Congress, as hereinafter provided.

N.J. Stat. Ann. §32:1-4 (West 1990); N.Y. Unconsol. §6404 (McKinney 1979) (emphasis added).

Similarly, Article VII of the Compact provides in pertinent part:

> The port authority shall have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the legislature of either state *concurred in by the legislature of the other*.

N.J. Stat. Ann. §32:1-8 (West 1990); N.Y. Unconsol. §6408 (McKinney 1979) (emphasis added).

As is the case of the DRPA, state control over the Port Authority is accomplished through mechanisms expressly set forth in the Compact itself, not through unilaterally enacted single state legislation. As this Court stated in *Hess*:

> Twelve Commissioners, six selected by each State, govern the Port Authority. See N.J. Stat. Ann. §§32:1-5, 32:12-3 (West 1990); N.Y. Unconsol. Laws §6405 (McKinney 1979); 1930 N.Y. Laws, ch. 422, §6. Each State may remove, for cause, the commissioners it appoints. See N.J. Stat. Ann.§§32:1-5, 32:12-5 (West 1990); N.Y. Unconsol. Laws, §6405 (McKinney 1979); 1930 N.Y. Laws, ch. 422, §4. Consonant with the Authority's geographic domain, four of New York's six Commissioners must be resident voters of New York City, and four of New Jersey's must be resident voters of the New Jersey portion of the Port of New York District.

See N.J. Stat. Ann. §+ (West 1990); N.Y. Unconsol. Laws §6405 (McKinney 1979).

> The Governor of each State may veto actions of the Port Authority Commissioners from that State, ... See N.J. Stat. Ann. §§32:1-17, 32:1-35.61, 32:2-6 to 32:2-9 (West 1990); N.Y. Unconsol. Laws §§6417, 6612, 7151-7154 (McKinney 1979). *Acting jointly, the state legislatures may augment the* powers and *responsibilities of the Port Authority*, see N.J. Stat. Ann. §32:1-8 (West 1990); N.Y. Unconsol. Laws §6408 (McKinney 1979), and specify the purposes for which the Port Authority's surplus revenues are used. See N.J. Stat. Ann. §32:1-142 (West 1990); N.Y. Unconsol. Laws §7002 (McKinney 1979).

502 U.S. at 36 (emphasis added).

Again, as is the case with the DRPA, the Port Authority Compact and its supplements and amendments are replete with references to the necessity of concurrent legislation by the sister state before any law imposing duties or obligations on the Port Authority is effective. The laws of New York and New Jersey imposing obligations on the Port Authority are, by their express terms, only effective upon the enactment of identical legislation by the sister state. *See*, N.J. Stat. Ann. §32:1-35.17 (West 1990); N.Y. Unconsol. L. §6647 (McKinney 1979); N.J. Stat. Ann. §32:1-35.27a (West 1990); N.Y. Unconsol. L. §6631 (McKinney Supp. 1999) (historical note); N.J. Stat. Ann. §32:1-35.36 (West 1990); N.Y. Unconsol. L. §6678 (McKinney 1979); N.J. Stat. Ann. §32:1-35.68 (West 1990); N.Y. Unconsol. L. §6601 (McKinney 1979) (historical note); N.J. Stat. Ann. §32:1-35.93 (West 1990); N.Y. Unconsol. L. §7192 (McKinney 1979); N.J. Stat. Ann. §32:1-119.3 (West 1990); N.Y. Unconsol. L. §6525 (McKinney 1979) (historical note); N.J. Stat. Ann. §32:1-140 (West 1990); N.Y. Unconsol. L. §6525 (McKinney 1979); N.J. Stat. Ann. §32:1-140.7 (West 1990); N.Y. Unconsol. L. §7058 (McKinney 1979); N.J. Stat. Ann. §32:1-146 (West 1990); N.Y. Unconsol. L. §6973

(McKinney 1979); N.J. Stat. Ann. §32:1-154.17 (West 1990); N.Y. Unconsol. L. §6817 (McKinney 1979); N.J. Stat. Ann. §32:1-154.24 (West 1990); N.Y. Unconsol. L. §6837 (McKinney 1979); N.J. Stat. Ann. §32:1-156 (West 1990); N.Y. Unconsol. L. §6932 (McKinney 1979); N.J. Stat. Ann. §32:1-168 (West 1990); N.Y. Unconsol. L. §7112 (McKinney 1979); N.J. Stat. Ann. §32:1-174 (West 1990); N.Y. Unconsol. L. §7136 (McKinney 1974); N.J. Stat. Ann. §32:1-176 (West 1990); N.Y. Unconsol. L. §7142 (McKinney Supp. 1999).

3. WATERFRONT COMMISSION LEGISLATION

The nature and structure of the Waterfront Commission is similar in material respects to the DRPA and the Port Authority. The Waterfront Commission was created by interstate compact for the purpose of eliminating racketeering and other criminal, corrupt and evil conditions on the waterfront within the Port District created by the Port Authority legislation. N.J. Stat. Ann. §32:23-2 to -4, -6 (West 1990); N.Y. Unconsol. L. §§9802-3, 9806 (McKinney 1979). Amendments and supplements to the Waterfront Commission Compact may be adopted only by the action of the Legislature of either State concurred in by the Legislature of the other. N.J. Stat. Ann. §32:23-70 (West 1990); N.Y. Unconsol. L. §9870 (McKinney 1979). The legislation provides that the Waterfront Commission shall enjoy the powers and have the duties imposed on it by the creating legislation and "such additional powers and duties as may hereafter be delegated to and imposed upon it from time to time by the action of the Legislature of either State *concurred in by the Legislature of the other*." N.J. Stat. Ann. §32:23-11 (West 1990); N.Y. Unconsol. L. §9811 (McKinney 1979) (emphasis added). The Waterfront Commission consists of two members. The governor of each state appoints a single Commissioner for a three-year term with the advice and consent of the respective state Senate. N.J. Stat. Ann. §32:23-8 (West 1990). The Waterfront Commission may act only by unanimous vote, *i.e.*, by the votes of the Commissioners from both States.. N.J. Stat. Ann. §32:23-9 (West 1990).

Changes in the powers and duties of the Waterfront Commission have been attempted or accomplished only through concurrent legislation of the two states. In creating the Waterfront Commission, each state provided that only a single state agency was created if the other state did not adopt concurring legislation creating a bi-state agency. N.J. Stat. Ann. §32:23-78 (West 1990); N.Y. Unconsol. L. §9931 (McKinney 1979). A 1970 effort of the two states to expand the jurisdiction of the Waterfront Commission to include air freight activity by amendatory legislation did not become effective because the legislation provided that it would not be effective if not approved by Congress, and Congress has not approved such legislation. Significantly, the legislation adopted by each state also provided that legislation *would not be effective if not adopted by the other state*. See note under N.J. Stat. Ann. §32:23-6 (West 1990) (second version). The states *have* affected the power of the Waterfront Commission by other, less far-reaching legislation. In each instance, this was accomplished by legislation which was effective only after the adoption of identical legislation by the other state. *See*, N.J. Stat. Ann. §32:23-23.1 (West Supp. 1999) (historical note); N.J. Stat. Ann. §32:23-75 (West 1990) (historical note); N.J. Stat. Ann. §32:23-77 (West 1990) (historical note); N.J. Stat. Ann. §32:23-84 (West 1990); N.J. Stat. Ann. §32:23-85 to -86 (West 1990) (historical notes); N.J. Stat. Ann. §32:23-104 (West 1990); N.J. Stat. Ann. §32:23-105.1 (West Supp. 1999) (historical note); N.J. Stat. Ann. §32:23-108 (West 1990); N.J. Stat. Ann. §32:23-113 (West 1990); N.J. Stat. Ann. §32:23-114 (West 1990 & Supp 1999) (historical note); N.J. Stat. Ann. §32:23-117 (West 1990); N.Y. Unconsol. L. §9907 (McKinney 1979) (historical note); N.Y. Unconsol. L. §9920 (McKinney Supp. 1999) (historical note); N.Y. Unconsol. L. §9922 (McKinney Supp. 1999) (historical note); N.Y. Unconsol. L. §9924 (McKinney Supp. 1999) (second version) (historical note); N.Y. Unconsol. L. §9925 (McKinney Supp. 1999); N.Y. Unconsol. L. §9937 (McKinney 1979).

* * * * *

In imposing the obligation to engage in interest arbitration upon the DRPA, the Appellate Division relied on statutes

containing different provisions of the respective states that do not refer to the DRPA. *A fortiori*, these statutes do not reflect a concurrence by the States of New Jersey and Pennsylvania that the DRPA's Compact should be amended to overturn or preempt the compact provision entrusting the DRPA Commissioners with fixing and determining the "qualifications, duties and compensation of DRPA employees subject to gubernatorial review.

Thus, the decision of the Appellate Division is inconsistent with the contractual nature of interstate compacts such as the ones creating DRPA and the *Amici Curiae*, the statutory schemes providing for concurrence in legislation imposing additional obligations on such entities, and the subsequent legislation of the parent states confirming the need for such concurrence. Accordingly, this Court should review the decision of the Appellate Division to address this matter concerning State interaction under the Compact Clause. *State ex rel. Dyer v. Sims, supra*, at 28.

II. THE DETERMINATION OF THE APPELLATE DIVISION THAT AN INTERSTATE COMPACT AGENCY MAY BE REGULATED BY THE LEGISLATION OF ONE PARENT STATE IN THE ABSENCE OF MUTUAL CONCURRENCE BY ALL PARENT STATES IS CONTRARY TO THE LAW OF NEW JERSEY'S PARTNER STATES IN CREATING PETITIONER AND THE *AMICI CURIAE*.

In contrast to the New Jersey courts, the courts of New York and Pennsylvania, New Jersey's partner in creating the Port Authority and the Waterfront Commission on one hand, and in creating the DRPA on the other, have held that an interstate compact agency is not affected by legislation of the parent states unless those states manifest a mutual intent to affect the agency.

The New York Court of Appeals has specifically rejected the proposition that parallel public policies of compacting states reflected in general legislation imposes obligations on an interstate compact agency. Rather, the court recognized that to affect a Compact Clause entity, the parent states must adopt concurrent statutes, which, by express terms, apply to an interstate compact agency.

In *Malverty v. Waterfront Comm'n*, 71 N.Y.2d 977, 529 N.Y.S.2d 67, 524 N.E.2d 421 (1988), the New York Court of Appeals held that Article 23-A of the Correction Law of the State of New York, prohibiting discrimination against persons previously convicted of a criminal offense, did not apply to the Waterfront Commission's occupation licensing functions. In so holding, the court relied on the fact that Article 23-A made no reference to the Waterfront Commission, did not provide that the Waterfront Commission Compact was amended or supplemented and did not state that its provisions would take effect upon the enactment of identical legislation by New Jersey. Id., at 980, 529 N.Y.S.2d at 68, 524 N.E.2d at 422. Significantly, the Court of Appeals found it irrelevant that New Jersey had enacted a similar statute prohibiting discrimination against persons convicted of crimes, *Id.*

The approach taken in *New York* is also taken in Pennsylvania, New Jersey's contractual partner in creating the DRPA. In *Nardi v. Delaware River Port Authority*, 88 Pa. Commw. 558, 490 A.2d 949 (1985), the court refused to apply similar statutes of both states to the DRPA because "neither creator state can unilaterally impose additional duties, powers or responsibilities upon the [DRPA]." *Id.*, at 560, 490 A.2d at 950. A unilaterally enacted Pennsylvania law provided that DRPA was to pay a disabled police officer his or her full salary during the full period of disability. *Id.*, at 561, 490 A.2d at 950. A unilaterally enacted New Jersey statute provided that the DRPA "may pay" a disabled employee his or her full salary for up to one calendar year of disability. *Id.*, at 562, 490 A.2d at 951. Despite the fact that the statutes were, by their terms, expressly applicable to the DRPA, the Pennsylvania court held

the statutes must be denied effect as unilateral legislation restricting a power already possessed by the Authority. *Id.*, at 565, 490 A.2d at 952. The court stated that the parent states of the DRPA could only benefit DRPA employees if it were clear that the legislatures of the two States intended to confer that benefit on DRPA employees. *Id.*, at 564 n.10, 490 A.2d at 952 n.10.

Thus, New York and Pennsylvania acknowledge the contractual nature of an interstate compact by requiring expressions of mutual intent by the parent states as a basis for regulation of an interstate agency's conduct.

In contrast, in the instant case, the Appellate Division did not respect the contractual nature of the DRPA compact. The Appellate Division did not base its decision on a finding that the New Jersey and Pennsylvania had *expressed* a *mutual* intent to alter the relationship between the DRPA and its employees. Rather, the court relied on each state's respective policy as to government labor relations *in general.* Appendix 12a, 14a.

Thus, the approach taken by the Appellate Division is markedly different from that of the courts of New Jersey's partners in creating the DRPA, the Port Authority and the Waterfront Commission.

III. REVIEW OF THE APPELLATE DIVISION DECISION IS NECESSARY TO AVOID CONFUSION AS TO THE STATE LAW APPLICABLE TO INTERSTATE COMPACT AGENCIES BECAUSE OF CONFLICTS AMONG THE COURTS OF THE STATES WHO ARE PARTY TO THE COMPACTS CREATING THE DRPA AND THE *AMICI CURIAE* WITH RESPECT TO WHETHER MUTUAL CONCURRENCE IS NECESSARY FOR INTERSTATE COMPACT AGENCIES TO BE REGULATED BY GENERALLY APPLICABLE STATE LAW.

Review by this Court of the decision of the Appellate Division is necessary to resolve confusion as to the law applicable to interstate compact agencies. The rule of decision of the Appellate Division, that the law of a parent state of an interstate compact agency applies to that agency when the other parent state or states have adopted similar laws of general applicability evincing the same public policy, generates confusion as to the law applicable to DRPA, the *Amici Curiae*, and other interstate compact agencies created by New Jersey and other states.[4] This confusion has two sources. First, the rule used to determine which state legislation applies to a New Jersey interstate compact agency varies from state to state. Second, the rule followed by the Appellate Division itself engenders confusion as to the law applicable to interstate compact agencies.

First, in the absence of review of the Appellate Division decision by this Court, courts of different jurisdictions that have no common reviewing court will resolve differently the question of which legislation of the parent states of an interstate compact agency are applicable to that agency.

Various courts with jurisdiction over the DRPA and the *Amici Curiae* follow different rules of decision as to which legislation of the parent states of an interstate compact agency are applicable to that agency. The rule applied by the Appellate Division, *i.e.*, that an interstate compact agency may be

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[4] The following is a list of interstate compact agencies formed by New Jersey and other states in addition to DRPA and the *Amici Curiae*: Delaware River Joint Toll Bridge Commission (Title 32 N.J. Stat. Ann., Ch. 8 (West 1990)), Delaware River and Bay Authority (Title 32 N.J. Stat. Ann., Ch. 11E (West 1990)), Palisades Interstate Park Commission (Title 32 N.J. Stat. Ann., Ch. 14 (West 1990)), Interstate Sanitation Commission (Title 32 N.J. Stat. Ann., Ch. 19 (West 1990)), Delaware River Basin Commission (Title 32 N.J. Stat. Ann., Ch. 20 (West 1990)), Atlantic States Marine Fisheries Commission (Title 32 N.J. Stat. Ann., Ch. 21 (West 1990)), Tri-State Regional Planning Commission (Title 32 N.J. Stat. Ann., Ch. 22B (West 1990)), Delaware Regional Planning Commission (Title 32 N.J. Stat. Ann., Ch.27 (West 1990)), Mid-Atlantic States Air Pollution Control Commission (Title 32 N.J. Stat. Ann., Ch. 29 (West 1990)).

regulated by the legislation of a parent state if complementary and parallel legislation exists in all parent states, has been followed in New Jersey since *Int'l Union of Operating Engineers, Local 68 v. Delaware River and Bay Authority*, 147 N.J. 433, 688 A.2d 569, *cert. denied*, 522 U.S. 861 (1997). As set forth above, New York and Pennsylvania state courts reject the rule, as have federal courts of United States. Federal courts in New York and Pennsylvania have also rejected New Jersey's rule of decision. *Dezaio v. Port Authority*, 205 F.3d 62 (2d Cir. 2000), rejected the claim that New York Human Rights Law applies to the Port Authority. Citing the *Hess* decision of this Court, the Second Circuit ruled that the enactment of general legislation by the Port Authority's parent States prohibiting employment discrimination was not sufficient to render that legislation applicable to the Port Authority, and applying that legislation to the Port Authority in the absense of the States' mutual concurrence would violate the Port Authority Compact. *Id.* at 65, 66. *Pilla v. Delaware River Port Authority*, 1999 WL 345918 (E.D. Pa. May 7, 1999), rejected a claim that Pennsylvania's Human Relations Act governs the actions of DRPA because New Jersey's Law Against Discrimination prohibits discrimination in employment and is thus similar. The court specifically rejected the New Jersey test that the laws of an interstate agency's parent states are applicable to the agency if the state's laws are "substantially similar". *Id.*, at *4.

Hence, whether the rule followed by the Appellate Division will be applied to an interstate compact agency *will vary depending on the forum in which the suit is heard.*

Moreover, although the current conflict exists across state lines, there is the potential the conflict will exist within New Jersey itself. Interpretation of an interstate compact is a question of federal law. *See*, *Cuyler v. Adams*, 449 U.S. 433, 438 (1981); *Delaware River Joint Toll Bridge Comm'n v. Colburn*, 310 U.S. 419, 427-28 (1940). Thus, a federal district court in New Jersey need not follow the New Jersey state court's resolution of the issue. Indeed, unless such a court rendered a decision contrary to other federal courts and that of neighbor states, a federal

court in New Jersey *would* create a conflict between New Jersey federal courts and New Jersey state courts on the issue[5]

This Court is the only court with the jurisdiction to resolve the conflict. *State ex rel, Dyer v. Sims, supra*, at 29.

In the absence of resolution of the issue by this Court, New Jersey interstate agencies, and other interested parties, have no means of ascertaining how the laws of a single state will apply to such agencies. A plaintiff could recover against an interstate compact agency under state law in New Jersey, but not under the "similar law"of the other parent state or states. *King v. Port Authority, supra*, n.5, at 946.

In addition, the rule adopted in New Jersey is itself a source of confusion. No genuine guidance is given as to how to identify similar legislation with similar purposes that may be applied to interstate compact agencies in the absence of mutual legislation expressions by parent states of application to an affected agency. In this case, the Appellate Division found sufficient similarity to apply the two State statutes to the DRPA despite significant differences in those statutes. Appendix, 12a-14a. The Appellate Division held that the two States' sharing of a policy that public employees are entitled to engage in collective negotiation is sufficient to render the two States' statutes complementary and parallel so that they may regulate the DRPA's conduct. *Id.* at 14a. However, identification of

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[5] In *King v. Port Authority*, 909 F. Supp. 938 (D.N.J. 1995), *aff'd*, 106 F.3d 385 (1996), a New Jersey federal court reached a decision contrary to that of the Appellate Division. However, *King* was decided prior to the decision of the New Jersey Supreme Court in *Int'l Union of Operating Engineers, Local 68 v. Delaware River and Bay Authority, supra*. *King* relied in part on New Jersey precedent prior to that decision, concluded that New Jersey courts would follow the rule that legislation of the parent states of the Port Authority apply to the agency *only* if the two states have concurrently adopted the legislation, or the two states have adopted similar legislation which purport to apply to the Port Authority, and followed that rule in holding that the New Jersey Law Against Discrimination does not apply to the Port Authority irrespective of the existence of a New York anti-discrimination law, the New York Human Rights law. 909 F. Supp. at 943- 46.

similarity in abstract public policies cannot serve as an effective guide to interested parties to distinguish those state laws which apply to interstate compact agencies without the concurrence of the partner state or states, and which do not. At a sufficiently high level of abstraction, all states share some common policy on public issues. For example, all tort law is intended to compensate the injured without placing a undue burden on potential defendants; all public employee labor law is intended to preserve labor peace, provide services to state residents, and deal fairly with employees. Moreover, such an approach can cause confusion as to the contour of the law to be applied. In *Int'l Union of Operating Engineers, Local 68 v. Delaware River and Bay Authority*, *supra*, the New Jersey Supreme Court made no attempt to address the mechanics of requiring the Delaware River and Bay Authority, a Delaware-New Jersey interstate compact agency, to negotiate with a union in the absence of an administrative agency designated by law to resolve labor disputes, relying on the ability of the Superior Court, Chancery Division, "to interpret labor law," without addressing how any differences in Delaware and New Jersey labor law would be resolved. *Id.* at 448, 688 A.2d at 576.

Issuance of a writ of *certiorari* by this Court, and a determination that, pursuant to the contractual nature of interstate compact agencies, concurrence of an interstate compact agency's parent states is necessary for state law to be applicable to that agency, would provide a basis for parties to distinguish between state law to be applicable to an interstate compact agency, and state law that is not.

Thus, review of the Appellate Division's decision by this Court would resolve two types of confusion as to state law to be applicable to an interstate compact agency engendered by the New Jersey rule.

CONCLUSION

For the foregoing reasons, *Amici Curiae* the Port Authority and the Waterfront Commission respectfully request that the Court grant the DRPA's Petition for Certiorari.

Dated: New York, New York
June 5, 2000

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IN THE

Supreme Court of the United States

DELAWARE RIVER PORT AUTHORITY,
Petitioner,

v.

FRATERNAL ORDER OF POLICE,
PENN-JERSEY LODGE 30, and JOSEPH VENA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF
NEW JERSEY,
APPELLATE DIVISION

REPLY BRIEF FOR PETITIONER

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Nothing in Respondents' brief in opposition detracts from the reasons why this Court should grant review, and the brief in opposition in many respects merely underscores why review is appropriate in this case.

1. Respondents admit, as they must, that the amendment provision of the Compact[1] requires "the action of either state *concurred in* by legislation of the other." (Resp. at 1) (emphasis added).[2] Respondents concede that "the interpretation of a compact 'presents a federal question,' " and that "all that is required by the courts [in determining whether certain laws apply to a compact entity] is '*some showing of agreement in the laws* involving and regulating [the] bi-state agency.' " (Resp. at 3, 4, 6).

2. This case centers on the meaning of the word "concurred" in the amendment provision of the Compact. The term "concur" is defined as "[t]o agree; accord; act together; consent." Black's Law Dictionary 291 (6th ed. 1990); *see also Settecase v. Port Auth. of New York & New Jersey,* 13 F. Supp. 2d 530 (S.D.N.Y. 1998) (as used in an interstate compact amendment provision, "[t]he term 'concur' is defined as 'to act together to a common end or single effect, . . . it implies bilateral action"). In *Settecase,* which involved a determination whether certain laws of the two compacting states (New Jer-

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1. Respondents' contention in their brief that "[t]he Compact . . . provides that legislation passed in one compact state shall become effective and applicable to the DRPA upon the 'passage . . . of a substantially similar act,' or 'the enactment of similar legislation,' or of 'legislation substantially similar' by the other compact state," (Resp. at 1-2, n.3), is inaccurate. The quoted language appears to be from West Publishing Company's "Historical and Statutory Notes" for the Pennsylvania and New Jersey annotated statutes, not from the Compact, as Respondents suggest. *Id.* Secondly, the quoted language follows only certain provisions of the Compact, and these provisions already contain *express reference or agreement* to apply to the Compact or the DRPA. Finally, the language quoted does not override the Compact's explicit amendment provision, which even Respondents elsewhere concede requires "the action of either state *concurred in* by legislation of the other." (Resp. at 1) (emphasis added).

2. Emphasis added throughout unless otherwise noted.

sey and New York) applied to *amicus* Port Authority of New York and New Jersey, the court required an express showing of "an intent to jointly act":

> According to those definitions [of concur], a state would not likely be said to have concurred in legislation by the other simply because it happened to enact legislation similar in language and effect. *Concurrence implies an intent to jointly act.*

Id. at 534.

Evidence of "an intent to jointly act" is precisely what is missing in New Jersey's Implied Amendment rule. To amend a compact which requires for a valid amendment "the action of either state *concurred in* by legislation of the other," two conditions must be satisfied under established compact jurisprudence: (1) express agreement in the compacting states' legislation indicating that the compact is to be amended by such legislation – *i.e.*, an "intent to jointly act"; *and* (2) legislation of the respective states that is nearly identical, if not identical. This simple, two-part standard is objective, easily applied, promotes predictable results, and squares with the terms of the compacts. It is the absence of the first condition that distinguishes New Jersey's permissive Implied Amendment rule.

New Jersey courts employ a standard that recognizes an amendment to a compact whenever legislation of the compacting states is "complementary or parallel" or "substantially similar." This standard may provide a satisfactory gloss on the second condition, the requirement that the companion legislation be "nearly identical," but fails to capture a requirement of fundamental constitutional dimension.

In short, in implying an amendment to the DRPA Compact that requires the DRPA to submit labor disputes to binding interest arbitration before a court-appointed arbitrator, the New Jersey court below ignored the first condition, and watered down the second. The constitutional error is particularly egregious in this case, where the effect of the "amendment" is improperly to cancel, override, and subordinate the power to fix employees' compensation, conferred on the DRPA Commissioners by express provisions of the Compact, a federal law.

I. A CLEAR CONFLICT EXISTS BETWEEN NEW JERSEY AND ITS NEIGHBORING STATES WITH RESPECT TO THE APPROPRIATE LEGAL STANDARD.

1. The Standard Applied In New Jersey Conflicts With The Standard Applied In New York.

Respondents seriously misread *Malverty v. Waterfront Comm'n*, 71 N.Y.2d 977, 524 N.E.2d 421, 529 N.Y.S.2d 67 (1988), but grudgingly concede that *Malverty* "displays displeasure" with New Jersey's Implied Amendment rule. (Resp. at 11). However, Respondents erroneously suggest that New York's "rejection of the doctrine of complementary legislation appears in *dicta* . . . ." (Resp. at 11).

The New York court's determination is not *dictum*. In *Malverty*, a former licensed dockworker sought a court order compelling the Waterfront Commission of New York Harbor ("Waterfront Commission") — an interstate compact entity formed between New York and New Jersey and one of the *amici* urging review in this case[3] — to restore him to a certain register. In support of that request, the former worker relied on New York legislation that prohibited discrimination against former inmates (such as Mr. Malverty) with respect to certain public employment opportunities. *Malverty*, 71 N.Y.2d at 979-80, 524 N.E.2d at 422, 529 N.Y.S.2d at 67-68. The question was whether this legislation applied to the Waterfront Commission. The legislation did not "refer[] to the Waterfront Commission." *Id.* at 980, 524 N.E.2d at 422, 529 N.Y.S.2d at 68. It contained no "express statement that the Legislature was amending or supplementing the provisions of the 'Compact.'" *Id.* Like the DRPA Compact in this case, the compact creating the Waterfront Commission also required legislation "concurred in by legislative action of the other State." *Id.*

3. Because of the threatened impact of the conflict between the New Jersey and New York courts on the Waterfront Commission and other New Jersey-related compact entities of the New Jersey's aberrant rule, the Waterfront Commission, in conjunction with the Port Authority of New York and New Jersey, has also filed a brief *amicus curiae* in this case urging this Court to grant review in this case.

Because of the lack of any basis for concluding that the first condition — agreement or intent to jointly act — was satisfied, the Court of Appeals of New York concluded that neither state had "concurred" in subjecting the Waterfront Commission to the legislation. *Id.* The court found it irrelevant that New Jersey had enacted "the same, or similar" legislation prohibiting discrimination against former inmates:

> That the two States have evinced the same, or similar, public policy regarding employment opportunities for former inmates by enacting similar 'antidiscrimination' laws is *not* sufficient under the express terms of the 'Compact' to render [the Compact] properly amended or supplemental such that the Commission would be subject to the provisions of [New York's antidiscrimination laws]."

Id. (citation to New Jersey statute omitted). *Malverty's* square holding on this point clearly belies Respondents' contention "that the decision below does not conflict with decisions of other state [courts]."

2. The Standard Applied In New Jersey Conflicts With The Standard Applied In Pennsylvania.

Respondents similarly misread *Nardi v. Delaware River Port Auth.*, 88 Pa. Commw. 558, 490 A.2d 949 (1985), as being consistent with the decision below. The Pennsylvania court held that the New Jersey and Pennsylvania statutes at issue — which were premised on the same public policy, *and which were even made specifically applicable to the DRPA* (thus satisfying the first condition) — could *not* be imposed on the DRPA. *Id.* at 565, 490 A.2d at 952. The Pennsylvania court reasoned that the difference between the word "*shall*," contained in the Pennsylvania act, and the word "*may*," contained in the corollary New Jersey act, was substantial enough for the laws to flunk the *second* condition for an effective amendment of a compact, *i.e.*, that the parallel legislation be identical or nearly identical.

Respondents' attempt to conflate the two conditions is evident from the fact that, in *Nardi*, both statutes *expressly provided* that the DRPA *was* subject to the legislation.

Respondents' contention that *Nardi* adopted New Jersey's Implied Amendment rule overlooks this fact. Any reference in *Nardi* to the "substantial similarity" test is limited to the second condition, *i.e.*, whether the legislation is identical or nearly identical.

The approaches of Pennsylvania and New Jersey courts could not be more sharply conflicting.

II. THE CONFLICT IS AGGRAVATED BY STATE-FEDERAL CONFLICTS, AS WELL AS STATE-STATE CONFLICTS.

Illustrating both the extent of the conflict and the frequent recurrence of the issue, the Second Circuit, in *Dezaio v. Port Auth. of New York & New Jersey,* 205 F.3d 62 (2d Cir. 2000), has very recently emphasized the necessity of the first condition of the legal standard for amending a compact — an intent to jointly act — thus tacitly rejecting New Jersey's rule. In dismissing the claim of a former employee of *amicus* Port Authority of New York and New Jersey under the New York Human Rights law on the ground that the law did not apply to the Port Authority, the Court stressed the absence of any indication that "either State legislature intended those laws [New York's and New Jersey's] to amend the provisions of the Compact":

> Nothing has been cited suggesting that New York's or New Jersey's anti-discrimination laws were *intended* to affect the internal operations of the Port Authority. That is, it does not appear that either State legislature *intended* those laws to amend the provisions of the Compact . . . 'bi-state entities created by compact . . . are not subject to the unilateral control of any one of the States that compose the federal system.'

Id. at 65 (citing *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30 (1994)). Application of New Jersey's rule in that case would likely have been outcome-determinative the other way.

Respondents ignore, rather than even attempting to distinguish, *C. T. Hellmuth & Assocs. v. Washington Metro. Area Transit Auth.*, 414 F. Supp. 408 (D. Md. 1976), a case that clearly demonstrates the conflict between the New Jersey

Implied Amendment rule and the federal standard for interstate compact amendments applied in federal courts. *C.T. Hellmuth* involved the issue whether Maryland's Public Information Act (the "Act") applies to the Washington Metropolitan Area Transit Authority ("WMATA"), an interstate agency created pursuant to a compact between Virginia, Maryland, and the District of Columbia, and an *amicus* that has also filed a brief supporting review of the important issue involved in this case. The court refused to subject WMATA to the Act and followed the "settled" rule that "one party may not enact legislation which would impose burdens upon the compact *absent the concurrence* of the other signatories." *Id.* at 409. The plaintiff argued that this rule, requiring concurrence or agreement (the first condition), should not apply "where it is claimed the parties have equivalent legislation"[4] (the second condition). *Id.* In rejecting plaintiff's "equivalent legislation" argument (the argument endorsed by the New Jersey court below), the court pointed out that, "*[r]egardless of how similar the laws may be*, plainly Maryland may not impose its preferences . . . upon Virginia and the District, for such an imposition, however minimal, is nonetheless an intrusion upon their interests and in derogation of the compact." *Id.* at 410. The federal court further stated that the mere fact that Virginia and the District of Columbia have adopted such laws "*can hardly be taken as a tacit agreement on their part that WMATA should be governed by the Maryland law* . . ." Id. at 409-10.

Unlike the New Jersey court below, the district court completely rejected "*tacit agreement*" as a basis for "implying" an amendment to the WMATA compact.

Recently, another federal court has noted the "permissiveness" of New Jersey's Implied Amendment rule used in deciding whether certain laws apply to an interstate compact. *Pilla v. Delaware River Port Auth.*, 1999 WL 345918 (E.D. Pa. May 7, 1999). In rejecting the New Jersey rule, the court noted the conflict between the New Jersey standard and the standard used by federal courts:

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4. Virginia and the District of Columbia also had freedom of information laws.

> Plaintiff tries to salvage his claim by arguing for the more permissive 'substantial similarity' test applied by some New Jersey courts . . . However, *plaintiff can point to no federal court that has adopted New Jersey's more permissive view*, and this Court has not been persuaded to become the first.

Pilla, 1999 WL 345918, at 4.

As *C. T. Hellmuth* and *Pilla* make clear, there is a conflict between the standard used in the federal courts and the permissive standard used by the New Jersey courts.[5] *See also Port Auth. Trans-Hudson v. Feeney Corp.*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring) (to "change the Port Authority's organization or powers, the legislatures of both States must pass a bill to that effect"); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951) ("It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States can be unilaterally nullified, or given final meaning by an organ of one of the contracting States").

Contrary to Respondents' suggestion that the New Jersey rule has only been rejected by one federal court, it has, in fact, been rejected by at least five: *Dezaio v. Port Auth. of New York & New Jersey*, 205 F.3d 62 (2d Cir. 2000); *Pilla v. Delaware River Port Auth.*, 1999 WL 345918 (E.D. Pa. May 7, 1999); *Settecase v. Port Auth. of New York & New Jersey*, 13 F. Supp. 2d 530 (S.D.N.Y. 1998); *C. T. Hellmuth & Assocs. v. Washington Metro. Area Transit Auth.*, 414 F. Supp. 408

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5. Respondents' reliance on *Moore v. Delaware River Port Auth.*, 80 F. Supp. 2d 264 (D.N.J. 1999) is misplaced. *Moore* involved the somewhat different question whether certain common law principles applied to the DRPA, not the question whether the compacting states' *legislation* applied. Respondents' reliance on *Redbird Engineering Sales, Inc. v. Bi-State Development Agency of Missouri-Illinois Metro. Dist.*, 806 S.W.2d 695 (Mo. App. Ct. 1991), again illustrates why this Court should grant review. Respondents suggest that *Redbird* adopted a "complementary or parallel" standard for amending the compact (a standard that does not require the first condition of the standard, intent to jointly act). *Redbird*, which somewhat parallels the decision below, merely suggests that the national conflict among the states on this important issue is even more extensive and therefore underscores the need for review.

(D. Md. 1976); *Rao v. Port of New York Auth.*, 122 F. Supp. 595 (E.D.N.Y. 1954), *aff'd*, 222 F.2d 362 (2d Cir. 1955).

III. THE QUESTION IS AN IMPORTANT AND FREQUENTLY RECURRING ONE.

The question involved in this case is a frequently recurring one. As Respondents concede, this case again involves an issue similar to that raised in *International Union of Operating Eng'rs, Local 68 v. Delaware River & Bay Auth.*, 147 N.J. 433, 688 A.2d 569, *cert. denied*, 522 U.S. 861 (1997) ("Local 68"), presented just two terms ago.[6] (Resp. at 1). Over fifty interstate compacts, affecting all fifty states, have an amendment provision identical, or nearly identical, to the amendment provision in the DRPA Compact at issue in this case. (Pet. at 5-7, n.5). Similar questions arise with increasing frequency under many of them. Because of New Jersey's aberrant rule, other compact entities in which New Jersey is involved either have already encountered (as in the case of the DRPA and the DRBA), or can expect in the near future to encounter, the same problem with New Jersey's more "permissive standard." That four important interstate compact entities involving New Jersey as a partner — the Delaware River Port Authority, the Delaware River & Bay Authority, the Port Authority of New

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6. Because of the impact of the conflict between New Jersey and Delaware courts on the Delaware River and Bay Authority and other compact entities of the New Jersey court's decision in this case, the Delaware River and Bay Authority has also filed a brief *amicus curiae* in this case urging this Court to grant review.

Local 68 involved the different issue whether non-police employees of *amicus*, Delaware River and Bay Authority, a bi-state entity involving Delaware and New Jersey, had the right under those states' laws to designate a representative, and through that representative, *engage* in collective negotiations. The relief ordered in *Local 68* was dramatically different from the relief ordered in the decision below. The decision did not infringe upon the Bay Authority's right to set *wages* and working conditions for its employees (interest arbitration was not ordered). No terms and conditions of a contract were imposed. The issue in this case is whether a state court by implied amendment can *compel* a compact entity to ignore specific requirements of, and powers granted to the compact entity in, the compact that created the entity.

York and New Jersey, and the Waterfront Commission of New York Harbor – are before this Court urging review of the issue in this case (the second in as many terms) underscores the importance of the issue and the need for review.

IV. THE COURT SHOULD GRANT CERTIORARI TO ESTABLISH A UNIFORM FEDERAL STANDARD.

In a sweeping over-generalization, Respondents wrongly suggest that interstate compacts are ill-suited subjects for uniform interpretation, relying only on inapposite quotations extracted from opinions involving unrelated contexts. Although Respondents cite *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27 (1951), for this proposition, the cited passage involves, instead, the impracticality of formulating a code for *litigation* among the states. *Id.* The cited dissenting opinion in *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 285 (1959), dealt with sovereign immunity in interstate compact cases. The case turned on the interpretation of *a particular* compact clause that possibly waived such immunity, rather than the type of ubiquitous provision involved here. *Id.* The standard compact amendment provision involved in this case naturally calls for a uniform national resolution of this question of federal law.

New Jersey's Implied Amendment rule invites forum-shopping, creates uncertainty, and properly requires harmonization to avoid unnecessary, recurring friction among the states.[7]

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7. While conceding that the decision below was certified as "final" by the New Jersey courts (Resp. at 3), Respondents nonetheless erroneously contend that review should be denied because the order is "arguably interlocutory." Putting to one side this erroneous and self-contradictory characterization of the order as "interlocutory," Respondents mistakenly contend that review of a question of conceded public importance is inappropriate in such circumstances. This is incorrect. *See* R. Stern, E. Gressman, S. Shapiro, & K.Geller, *Supreme Court Practice* § 4.18 (7th ed. 1993). Indeed, this Court has granted review to even nonfinal orders where a lower court's decision was "clearly erroneous." *Mazurek v. Armstrong*, 520 U.S. 968 (1997). Moreover, nonfinal orders may also be reviewed "where the lower court's judg-

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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NOTES *(Continued)*

ment has produced *immediate consequences*" for the petitioning party. *Id.* (a case involving a *threat* of action by the lower court). Interlocutory decisions have been reviewed in other circumstances. *See United States v. General Motors Corp.*, 323 U.S. 373, 374 (1945) (granting certiorari to resolve a conflict among courts before a final judgment); *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 408-09 (1916) (same); *Forsyth v. Hammond*, 166 U.S. 506 (1897) (same); *American Constr. Co. v. Jacksonville, T. & K. R. Co.*, 148 U.S. 372 (1893) (granting certiorari where the nonfinal judgment presented a novel and important question, and where acceptance of petitioner's position would render the lower court's decision void). Similar circumstances are present in this case.

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